



Number 11 of 2003

HEALTH INSURANCE (AMENDMENT) ACT 2003

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Definition of “functions”.
 3. Liability of Authority for acts, omissions etc.
 4. Amendment of Defamation Act 1961.
 5. Amendment of section 12 of Principal Act.
 6. Amendment of section 12B of Principal Act.
 7. Waiver of repayment of advances to Authority.
 8. Short title, collective citation and construction.
-

[No. 11.] *Health Insurance (Amendment) Act* [2003.]
2003.

Acts Referred to

Defamation Act 1961	1961, No. 40
Health Insurance (Amendment) Act 2001	2001, No. 17
Health Insurance Act 1994	1994, No. 16
Health Insurance Acts 1994 and 2001	
Irish Takeover Panel Act 1997	1997, No. 5



Number 11 of 2003

HEALTH INSURANCE (AMENDMENT) ACT 2003

AN ACT TO MAKE PROVISION IN RELATION TO THE LIABILITY OF THE HEALTH INSURANCE AUTHORITY IN RESPECT OF THE PERFORMANCE BY IT OF ITS FUNCTIONS; TO MAKE PROVISION IN RELATION TO RISK EQUALISATION SCHEMES AND IN RELATION TO LIMITED EXEMPTIONS FROM CERTAIN PROVISIONS OF SUCH SCHEMES; TO AMEND THE HEALTH INSURANCE ACT 1994 AND THE DEFA- MATION ACT 1961; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [16th April, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act, except where the context otherwise requires— Interpretation.

“Act of 2001” means the Health Insurance (Amendment) Act 2001;

“Principal Act” means the Health Insurance Act 1994.

2.—Section 2 of the Principal Act is hereby amended by the inser- Definition of
tion in subsection (1) of the following definition: “functions”.

“‘functions’ includes powers and duties and references to the per-
formance of functions include, as respects powers and duties, refer-
ences to the exercise of the powers and the carrying out of the
duties;”.

3.—The Principal Act is hereby amended by the insertion of the Liability of
following section: Authority for acts,
omissions etc.

“35.—(1) None of the following persons, that is to say, the
Authority, the Registrar, or a member, or member of staff, of
the Authority shall be liable in damages in respect of any act
done or omitted to be done by it or him or her in the perform-
ance, or purported performance, of its or his or her functions
unless the act or omission concerned was done in bad faith.

(2) Without prejudice to the generality of subsection (1), a
person to whom that subsection applies shall not be liable in
damages in respect of any recommendation, determination,

[No. 11.] *Health Insurance (Amendment) Act* [2003.]
2003.

S.3

advice, direction, report, or notice made, given, prepared or published by it or him or her unless it was made, given, prepared or published, as the case may be, in bad faith.

(3) Without prejudice to subsection (4), the Authority may, subject to the provisions of any enactment or rule of law, indemnify the Registrar, or any member, or member of staff, of the Authority in respect of any act done or omitted to be done by him or her in the performance, or purported performance, of his or her functions as Registrar or as such member or member of staff unless the act or omission concerned was done in bad faith.

(4) The Authority may indemnify the Registrar or any member, or member of staff, of the Authority in respect of any liability on his or her part to pay damages or costs by reason of any act done or omitted to be done by him or her in the performance, or purported performance, of his or her functions as Registrar or as such member or member of staff, as the case may be, being a liability that—

- (a) has been determined in proceedings before a court or tribunal of a place other than the State, or arises by virtue of an agreement entered into in settlement of proceedings before such a court or tribunal, and
- (b) would not have been determined if the provisions of this section had been applied in those proceedings by the court or tribunal or, as the case may be, would not have been the subject of an agreement as aforesaid but for the reliance, in good faith, by the Registrar or such member, or member of staff, on any legal opinion or advice to the effect that the provisions of this section would not be applied by the court or tribunal in those proceedings.”.

Amendment of
Defamation Act
1961.

4.—Part II of the Second Schedule to the Defamation Act 1961 is hereby amended by the insertion of the following paragraph after paragraph 6 (inserted by the Irish Takeover Panel Act 1997):

“7. (1) A copy or fair and accurate report or summary of any recommendation, determination, advice, direction, report or notice made, given, prepared or published by the Health Insurance Authority.

(2) This paragraph is without prejudice to section 35 of the Health Insurance Act 1994 (inserted by *section 3* of the *Health Insurance (Amendment) Act 2003*).”.

Amendment of
section 12 of
Principal Act.

5.—Section 12 of the Principal Act (inserted by section 9 of the Act of 2001) is hereby amended by—

- (a) the substitution of the following clause for clause (III) of subsection (4)(c)(i):

“(III) include in that report a recommendation by the Authority that the Minister ought or ought not (as it considers appropriate having regard to the best overall interests of health insurance consumers) to exercise the power hereafter

[2003.] *Health Insurance (Amendment) Act* [No. 11.]
2003.

mentioned in this subsection, but no such S.5
recommendation shall be so included—

(A) unless it appears to the Authority from
such an evaluation and analysis that con-
ditions specified in the scheme related to
the nature and distribution of insured risks
among the registered undertakings are ful-
filled, or

(B) if the Minister has already exercised that
power.”,

(b) the substitution of the following paragraph for paragraph
(a) of subsection (5):

“(a) give notice to each registered undertaking (other
than a restricted membership undertaking that
has served a notice under subsection (2)(b)) of
the fact that it proposes to include such a recom-
mendation in the report, the nature of that pro-
posed recommendation and the reasons
therefor.”,

and

(c) the substitution of the following paragraph for paragraph (a)
of subsection (6):

“(a) give notice to each registered undertaking (other
than a restricted membership undertaking that
has served a notice under subsection (2)(b)) of
the fact that he or she proposes to make such a
determination (and the day proposed to be
appointed under that provision accordingly) and
the reasons for that proposed determination.”.

6—Section 12B of the Principal Act (inserted by section 10 of the
Act of 2001) is hereby amended by—

Amendment of
section 12B of
Principal Act.

(a) the substitution of the following subsection for subsection
(1):

“(1) (a) Subject to paragraph (c), a registered undertak-
ing (other than a restricted membership
undertaking) may, before the date on which
it commences the carrying on of a health
insurance business (in this section referred to
as the ‘commencement date’), serve a notice
on the Authority stating that it does not
wish—

(i) a requirement of a scheme to make a
return or returns, in so far as the return
or returns would relate to the period
of 6 months beginning on the com-
mencement date, or

(ii) the other provisions of a scheme in
respect of the period of 36 months
beginning on the commencement date,

to apply to it.

[No. 11.] *Health Insurance (Amendment) Act* [2003.]
2003.

S.6

(b) Where a registered undertaking serves a notice under and in accordance with paragraph (a), and the commencement date in respect of that undertaking falls not later than 3 months after the service by it of that notice, neither—

(i) a requirement of a scheme, to make a return or returns in so far as the return or returns would relate to the period of 6 months beginning on that commencement date, nor

(ii) the other provisions of a scheme in respect of the period of 36 months beginning on that commencement date,

shall apply to that undertaking.

(c) A registered undertaking that is an associated company of a registered undertaking that is not entitled to serve a notice under paragraph (a) shall not be entitled to serve such a notice.”,

and

(b) the insertion of the following subsection:

“(1A) Where an undertaking (in this subsection referred to as the ‘first-mentioned undertaking’), being an associated company of an undertaking that before the passing of the *Health Insurance (Amendment) Act 2003* was not entitled to serve a notice under this section, served a notice under this section on or after 21 February 2003 but before the passing of that Act—

(a) the requirement of any scheme to make a return or returns, in so far as the return or returns would relate to the period of 6 months beginning on the date on which the first-mentioned undertaking commences the carrying on of a health insurance business, and

(b) the other provisions of any scheme, in respect of the period of 36 months beginning on that date,

shall, notwithstanding the service of that notice, apply to the first-mentioned undertaking.”.

Waiver of repayment of advances to Authority.

7.—Section 30 of the Principal Act is hereby amended by the insertion of the following subsection:

“(2) Such moneys advanced to the Authority under subsection (1) as—

(a) the Minister, with the consent of the Minister for Finance, determines, and

[2003.] *Health Insurance (Amendment) Act* [No. 11.]
2003.

(b) on the passing of the *Health Insurance (Amendment) S.7 Act 2003*, have not been repaid,

shall not require to be repaid.”,

and that part of the said section 30 apart from the subsection inserted by this section may be referred to as subsection (1).

8—(1) This Act may be cited as the Health Insurance (Amendment) Act 2003. Short title, collective citation and construction.

(2) The Health Insurance Acts 1994 and 2001 and this Act may be cited together as the Health Insurance Acts 1994 to 2003, and shall be construed together as one Act.