

**ANNUAL REPORT
OF THE
HEPATITIS C
COMPENSATION TRIBUNAL
1999**





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OF THE
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COMPENSATION TRIBUNAL
1999

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
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Introduction

I am very pleased to have the opportunity of introducing the second Report on the activities of the Hepatitis C Compensation Tribunal.

The Tribunal was established in December 1995 to compensate, inter alia, persons infected with Hepatitis C as a result of the use of Human Immunoglobulin Anti-D, or the receipt of blood transfusions or blood products within Ireland. The Tribunal has been hearing claims on a continuous basis since March 1996. The introduction of a second division of the Tribunal in July 1997 together with a procedure whereby claims could be settled has effectively eliminated any waiting list. The Tribunal is now in a position to be able to assign a hearing date to any claim in which the documentation has been lodged and is ready to proceed.

Of the total number of claims lodged (1987), 1,353 have been disposed of. In the remaining cases the Tribunal is in regular correspondence with Claimants and/or their legal representatives in an effort to bring these to a speedy conclusion.

In conclusion, it is only proper that I express my appreciation to my fellow members of the Tribunal, to our Secretary Gerard Nugent and to the staff who perform a wide range of tasks. I would like to pay a special tribute to my ex-colleagues whose terms of office expired during the year and whose names are mentioned later in this Report.



Seamus F. Egan S.C.
Chairman

Membership of the Tribunal

The membership of the Tribunal is as follows:

Mr Seamus F. Egan S.C. (retired Judge of the Supreme Court) Chairman

Her Honour Judge Alison Lindsay B.L. Judge of the Circuit Court

Ms Sheila Cooney, Solicitor

Ms Margaret Nerney S.C.

Ms Karen Fergus B.L.

Mr Michael Mulcahy B.L.

Ms Leonie Reynolds B.L.

Mr James Devlin B.L.

Ms Una McGurk B.L.

Ms Mary Cantrell, Solicitor*

Ms Deirdre Hegarty, Solicitor*

Mr David Martin, Solicitor*

Mr Colm Ó hOisín B.L.*

Mr Joseph Hogan B.L.*

Ms Patricia McNamara, Solicitor**

The terms of office of members Ms Eileen Lydon S.C., Ms Miriam O'Riordan S.C., Ms Iseult O'Malley B.L., and Ms Ann FitzGerald, Solicitor expired on 31st Oct. 1999. The term of office of Ms Agnes Crean, Solicitor expired on 31st December 1999.

* (appointed with effect from 1st November 1999)

** (appointed with effect from 1st January 2000)

Entitlement to Make a Claim

The categories of persons entitled to apply for compensation are set out in Section 4 (1) of the Hepatitis C Compensation Tribunal Act, 1997 and in S.I. No. 432 of 1998 (extension of classes of Claimants before Tribunal) Regulations, 1998 and the onus of proof on a Claimant is set out in Section 4 (8) of the Act. The Act and associated Statutory Instruments are set out in Appendix I to this Report.

**POTENTIAL CLAIMANTS ARE
PARTICULARLY ADVISED
TO NOTE THE RELEVANT
TIME LIMITS WHICH ARE
SET OUT IN SECTION 4 (14) OF
THE ACT.**

Advertising

To ensure continued public awareness of the Compensation Scheme, in May and November 1999 advertisements were placed in national, weekly, daily and Provincial newspapers. The Tribunal is anxious that all those who might be entitled to apply for compensation are aware of its existence and how to apply. Newspaper advertising will continue on a twice yearly basis. The Tribunal is also publicised on R.T.E's Public Information Network which appears on Aertel Page 652.

The Tribunal Web site is at present under construction and it is hoped to have it operational during the year.

Operation of the Tribunal

The Tribunal operated as a non-statutory Scheme of compensation from the date of its establishment on 16th Dec. 1995 to 31st Oct. 1997. On 1st Nov. 1997 the Hepatitis C Compensation Tribunal Act, 1997 came into effect.

Claims are dealt with by the Tribunal by way of an in camera oral hearing before at least two members of the Tribunal or by way of an offer of settlement. (Settlement arrangements — Appendix II).

Hearings are held in the offices of the Tribunal at Arran Court, Smithfield, Dublin. The Tribunal from time to time holds sittings in Áras na Mac Léinn, University College Cork in response to requests from Claimants in the Munster area.

New Applications

The Tribunal received 104 new claims for compensation in 1999 making a total of 1987 claims submitted.

Awards

The Tribunal paid 214 awards in the total sum of £34,039,312.00 during the year. This amount includes increases in compensation awarded by the High Court on appeal from the Tribunal and applications to the Tribunal pursuant to Section 6 (3) of the Hepatitis C Compensation Tribunal Act, 1997.

Three claims were disallowed by the Tribunal during 1999.

The awards ranged in size from £1,000.00 to £760,000.00 with the average award being £159,062.00. During 1999 the Tribunal paid 104 single lump sum awards and 110 provisional awards. In the provisional awards made to date the Tribunal has been of the view that on the evidence before it that there was a possibility, but no more than a possibility that the Claimant, as a result of having contracted Hepatitis C might suffer a particular serious consequence or consequences in the future. In addition the Tribunal has specified the time period within which the Claimant may apply for further compensation in the event of such consequence or consequences occurring.

Payment of Award by Instalments

Payment of an award by instalments has been effected in one application at the request of the Claimant.

Claims Determined by the Non-Statutory Scheme Tribunal

A person who has had a claim determined by the non-statutory Scheme Tribunal may apply to the Tribunal pursuant to Section 6 (3) (a), (b), (c), or (d) of the 1997 Act. A total of 152 such applications have been received to date. 14 were dealt with by the Tribunal during 1999 and as a result 12 awards were increased by the Tribunal while 2 applications were refused.

Legal Costs

In 1999 the sum of £7,863,778.00 was paid in costs arising from 315 claims.

Reparation Fund

Section 11 (4) of the 1997 Act established a Reparation Fund whereby a Claimant who had accepted an award from the Tribunal or an offer of settlement would be entitled to apply to have an amount paid to her / him from the Fund in lieu of the Tribunal assessing and awarding aggravated or exemplary damages — with the amount from the Fund to be fixed at 20% of the total award or settlement. The Government subsequently made arrangements to allow the legal personal representatives of deceased claimants to apply for the Fund payment.

In 1999 £7,032,056.00 was paid out by the Tribunal from the Fund in 220 claims.

Aggravated or Exemplary Damages

No claim for aggravated or exemplary damages was determined by the Tribunal during 1999.

Staff

A staff of four currently provide the administrative / clerical support for the operation of the Tribunal. A firm of stenographers is engaged on a commercial basis for all hearings in the Tribunal and transcripts of proceedings are made available to each Claimant.

Accounts

Particulars of the accounts of the Tribunal are set out in Appendix III.

Withdrawn / Inactive Claims

Seventy-three claims have been withdrawn to date. In a further 74 cases there has been no attempt to pursue the claim for some considerable time. These are unlikely to proceed further though the files remain open.

APPENDIX I



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Establishment day.
 3. The Tribunal.
 4. Claims before Tribunal.
 5. Awards of Tribunal.
 6. Dissolution of and claims before non-statutory scheme Tribunal.
 7. Regulations to give effect to Act.
 8. Settlements.
 9. Extension by regulations of persons who may make a claim before Tribunal.
 10. Special account.
 11. Reparation Fund.
 12. Report of Tribunal.
 13. Power to remove difficulties.
 14. Laying of regulations.
 15. Expenses of Minister.
 16. Short title.
-

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

ACTS REFERRED TO

Appropriation Act, 1995	1995, No. 34
Civil Liability Act, 1961	1961, No. 41
Civil Liability (Amendment) Act, 1996	1996, No. 42
Medical Practitioners Act, 1978	1978, No. 4
Statutes of Limitation, 1957 and 1991	



Number 34 of 1997

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;

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

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.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(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.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.3

(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.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(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.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.4

(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.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(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.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.5

(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.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(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.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

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.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(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.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

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.

S.I. No. 440 of 1997.

REGULATIONS

entitled

Hepatitis C Compensation Tribunal Act Regulations, 1997

Pn. No. 4564

**Price - 40p
Postage - 36p**

S.I. No. 440 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL REGULATIONS, 1997.

The Minister for Health and Children in exercise of the powers conferred on the Minister by section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Regulations 1997.
2. (1) A claimant shall, not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim, submit in writing medical or other relevant reports, on which a claimant intends to rely. The Tribunal may, at its discretion, accept such reports within a shorter time.

(2) Items of special damage shall be vouched by the claimant to the Tribunal not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim. The Tribunal may, at its discretion, accept such vouching within a shorter time.

(3) If, in the opinion of the Tribunal, a claimant fails to comply with paragraph (1) or (2) of this Regulation or a claimant's case is presented at excessive length, the Tribunal may reduce the amount in respect of costs or expenses which might otherwise be awarded to such claimant by such amount as the Tribunal, in its sole discretion, may decide.
3. (1) The Tribunal shall as soon as may be after the establishment day provide itself with an official seal.

(2) The seal of the Tribunal shall be authenticated by the signature of the Tribunal chairman or such other member thereof as may be authorised by the Tribunal to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Tribunal and every document purporting to be an instrument made by the Tribunal and carrying the seal of the Tribunal shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.
4. (1) A claimant who has been awarded costs or expenses shall submit her or his bill of costs (or expenses) to the Chief State Solicitor who may agree the quantum of those costs or expenses. In default of agreement, the matter shall be re-entered before the Tribunal to determine the quantum of costs or expenses.

(2) In determining the amount of costs or expenses associated with a claim regard shall be had to:
 - (a) the amount of the award,
 - (b) the amount of work necessarily and properly undertaken by the claimant's lawyers referable to the application for compensation.

- (c) the informal nature of the Tribunal's proceedings,
- (d) the standard of proof required by the Tribunal,
- (e) the matters referred to in Regulation 2(3) of these Regulations,
- (f) any other factor which it considers relevant.



GIVEN under the Official Seal of the Minister for
Health and Children, this 30th day of
October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 441 of 1997.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act (Number of Ordinary Members
of Tribunal) Regulations, 1997**

Pn. No. 4565

**Price - 40p
Postage - 36p**

S.I. No. 441 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL ACT (NUMBER OF ORDINARY MEMBERS OF TRIBUNAL) REGULATIONS, 1997.

The Minister for Health and Children, in exercise of the powers conferred on the Minister by sections 3(3) and 7(2) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of the 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of the 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Number of Ordinary Members of Tribunal) Regulations, 1997.
2. It is hereby prescribed that the number of ordinary members of the Tribunal shall be 14.



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 443 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day)
Order, 1997**

Pn. No. 4569

**Price - 40p
Postage - 36p**

S.I. No. 443 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (ESTABLISHMENT DAY)
ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 2 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the establishment day for the purposes of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 444 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund)
(Appointed Day) Order, 1997**

Pn. No. 4570

**Price - 40p
Postage - 36p**

S.I. No. 444 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (REPARATION FUND)
(APPOINTED DAY) ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 11(9) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund) (Appointed Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the appointed day for the purposes of section 11 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 195 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a))
Regulations, 1998**

Pn. No. 5787

**Price - 40p
Postage - 36p**

S.I. No. 195 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 5 (9)(a))
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 5(9)(a) and section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a)) Regulations, 1998.
2. It is hereby prescribed that a claimant shall, as well as the period referred to in section 5(9)(a) of the Hepatitis C Compensation Tribunal Act, 1997, have a period of not later than one month from the date of commencement of rules of court in relation to such appeals, during which the claimant may decide in writing either to accept or reject the award of the Tribunal or appeal the award under subsection (15) of that section.



GIVEN under the Official Seal of the Minister
for Health and Children, this 9th day of June,
1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 196 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations,
1998**

Pn. No. 5788

**Price - 40p
Postage - 36p**

S.I. No. 196 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations, 1998.

2. In these Regulations

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

“the Court” means the High Court.

3. Any award of general or special damages or both including costs, made by the Court on appeal under section 5(15) or section 6(3)(e) of the Act, may be paid from the special account set up under section 10 of the Act.

4. A person who, on appeal to the Court under section 5(15) or section 6(3)(e) of the Act, is granted an award of general or special damages or both, may apply to have an amount paid to her or him from the Reparation Fund in lieu of the assessment of aggravated or exemplary damages.



GIVEN under the Official Seal of the Minister for Health and Children, this 9th day of June, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 392 of 1998.

**Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C
Compensation Tribunal), 1998.**

Published by the Stationery Office, Dublin

**To be purchased from the
Government Publications Sale Office,
Sun Alliance House,
Molesworth Street,
Dublin 2**

or through any bookseller

Pn. No. 6296

**Price - £1.00
Postage - 48p**

S.I. No. 392 of 1998.

**RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C
COMPENSATION TRIBUNAL), 1998.**

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act, 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act, 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act, 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961, section 48), and the Courts (Supplemental Provisions) Act, 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the annexed Rules of Court.

Dated this 23rd day of July, 1998.

Frederick Morris
Ronan Keane
Kevin Lynch
Richard Johnson
Gordon Holmes
Eamon Marray

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

Dated this 14th day of October, 1998.

JOHN O'DONOGHUE,
Aire Dlí agus Cirt
Comhionannais agus Athchóirithe Dlí.

S.I. No. 392 of 1998.

**RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C
COMPENSATION TRIBUNAL), 1998.**

1. The following shall be inserted as Order 105A of the Rules of the Superior Courts immediately after Order 105 thereof:

ORDER 105A

APPEALS FROM THE HEPATITIS C COMPENSATION TRIBUNAL

1. An appeal to the High Court under section 5 (15) or under section 5 (16) of the Hepatitis C Compensation Tribunal Act, 1997 ("the Act") shall be brought by way of originating notice of motion.
2. (1) Where an appeal against an award is brought by a claimant, such notice of motion shall be issued within one month from the date of receiving notice of the making of the award or within such greater period as may be prescribed by the Minister.

(2) Where an appeal against a decision of the Tribunal is brought (other than an award) such notice of motion shall be issued within one month from the date of the decision.

(3) Where an appeal is brought by a claimant, the Minister may cross-appeal within one month of the date of service of the notice of motion upon the Minister. Such cross-appeal shall be taken by way of a notice of motion. An appeal by any party shall put the matter appealed against fully in issue and a notice of cross-appeal shall not be required on that issue by any other party.

(4) Where an appeal is brought under section 5 (16) of this Act by the Minister or a relevant agency, such appeal shall be brought within one month of the date of the making of the award of aggravated or exemplary damages.

(5) Any appeal brought by a person pursuant to section 6 (3) (e) of the Act shall be brought by originating notice of motion within six months from the date of the commencement of these rules or within such further period as may be permitted by the Court under Order 122.
3. (1) Any notice of motion appealing any award or other decision or cross-appealing an appeal brought by a claimant shall be served by pre-paid ordinary post.

(2) Where an appeal is brought by a claimant or by a person who is appealing an award under section 6 (3) (e) it shall be served upon the Minister and also upon any relevant agency, where appropriate. The Minister and such relevant agency (if any) shall be the respondent(s) in the appeal.

(3) Where an appeal is brought by the Minister or by a relevant agency it shall be served upon the claimant and upon the Minister if he is not bringing the appeal or upon the relevant agency if it is not bringing the appeal, as appropriate.

- (4) In every appeal the person bringing the appeal shall serve a copy of the appeal on the Tribunal.
4. (1) There must be at least ten days between service of the notice of motion and the date specified therein for the hearing of the motion.
- (2) Every notice of motion bringing an appeal shall be grounded upon the affidavit of the appellant, and on such other affidavit or affidavits as appears appropriate and every cross-appeal by the Minister shall be grounded upon such affidavit or affidavits as may be filed on the Minister's behalf. Any respondent to an appeal may file an affidavit in reply thereto within 28 days of receipt of such notice of appeal or within such further time as the Court may allow.
- (3) In every appeal brought by a claimant or by a person appealing an award under section 6 (3) (e), such affidavit shall:
- (a) exhibit the application made to the Tribunal or to the non-statutory scheme Tribunal, as the case may be;
 - (b) exhibit the written, medical or other relevant written expert evidence adduced;
 - (c) exhibit any other relevant material adduced on behalf of such claimant or person;
 - (d) exhibit such written record (if any) of the proceedings and determination made by the Tribunal or non-statutory scheme Tribunal, as the case may be;
 - (e) exhibit a copy of the relevant award or decision of the Tribunal or the award of the non-statutory scheme Tribunal, as the case may be;
 - (g) exhibit the waiver of any right of action required by section 5 (18) of the Act and/or any notice of discontinuance of proceedings already instituted;
 - (h) state concisely the grounds upon which the appeal has been brought;
 - (i) specify where the claimant or person appealing an award under section 6 (3) (e) is requesting that the appeal be heard otherwise than in public.
- (4) Where a cross-appeal is brought by the Minister, it shall be verified by affidavit which shall set out concisely the grounds of any such appeal and shall exhibit the relevant material relating to such cross-appeal. The appellant may file a replying affidavit within 28 days of the receipt of notice of such cross-appeal.
- (5) Where an appeal is brought by the Minister or a relevant agency in respect of an award of aggravated or exemplary damages, such appeal shall be verified by affidavit which shall set out concisely the grounds of appeal and shall exhibit all relevant material relating to such appeal.
- (6) Where such appeal is brought by the Minister or the relevant agency under section 5 (16) of the Act the claimant may, within twenty eight days of the receipt of such appeal, file an affidavit or affidavits in reply thereto and the claimant may, either in any such affidavit or by letter in writing or at the hearing of such appeal request that such appeal be heard in public.

5. An appeal or cross-appeal brought pursuant to the Act shall be heard and determined upon affidavit provided that oral evidence may be given to the Court by a claimant or his or her medical practitioner or expert or both or by any other person with the leave of the Court. In relation to any appeal or appeals concerning a joint award made by the Tribunal to a claimant and to his or her spouse, such appeal shall be heard on a joint basis.
 6. Any person desiring to seek leave of the Court for an appeal pursuant to section 5 (19) of the Act shall, within twenty one days from the date of the decision of the Court, give notice to any other party of the specified question of law in respect of which leave is sought.
 7. The provisions of Order 22 rule 10 (10) shall apply *mutatis mutandis* to an application pursuant to section 5 (13) of the Act for the approval of the Court, which approval shall be sought by lodging all necessary papers within one month of the notification of the making of the award.
 8. The provisions of Rules 1 to 7 shall apply to any Appeals which are in existence at the date of the commencement of these Rules to such extent as the President of the High Court in his discretion may direct.
2. This rule shall come into operation on the 23rd day of October, 1998.
 3. This rule shall be construed together with the Rules of the Superior Courts, 1986 to 1998 and may be cited as the Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C Compensation Tribunal), 1998.

EXPLANATORY NOTE.

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

These Rules which come into operation on 23rd October, 1998, prescribe procedures in relation to appeals against decisions (including awards) of the Hepatitis C Compensation Tribunal pursuant to the Hepatitis C Compensation Tribunal Act, 1997.

S.I. No. 417 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2)
Regulations, 1998**

Pn. No. 6349

**Price - 40p
Postage - 36p**

S.I. No. 417 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13) (NO. 2)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by Section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2) Regulations, 1998.
2. Section 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997), is hereby amended by the insertion after "Tribunal" of "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".



GIVEN under the Official Seal of the Minister for Health and Children, this 28th day of October, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 432 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of
Claimants Before Tribunal) Regulations, 1998**

Pn. No. 6391

**Price - £1.00
Postage - 36p**

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (EXTENSION OF CLASSES OF CLAIMANTS BEFORE TRIBUNAL) REGULATIONS, 1998.

The Minister for Health and Children, in exercise of the powers conferred on him by Sections 4 (14) (d) and 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), with the consent of the Minister for Finance, hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998.

2. In these Regulations—

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

“diagnosed relative” means a parent, brother or sister, whether of the whole blood, the half blood or by affinity of a person referred to in section 4(1)(a) or (b) of the Act and who has been diagnosed positive for Hepatitis C.

3. It is hereby prescribed that—

(a) a diagnosed relative,

(b) a person who is responsible for the care of a diagnosed relative and who has incurred financial loss or expenses as a direct result of providing such care arising from the diagnosed relative being cared for having contracted Hepatitis C, and

(c) where a diagnosed relative 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 the diagnosed relative,

may make a claim for compensation before the Tribunal.

4. It is hereby prescribed that—

(a) a diagnosed relative 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 that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later,

(b) a person referred to in Regulation 3(b) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date upon which the diagnosed relative in her or his care first became aware that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later, and

(c) a person referred to in Regulation 3(c) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date of the death of the diagnosed relative, or the making of these Regulations, whichever is the later.

5. Section 4(8) of the Act is hereby amended by the insertion in paragraph (d) after “subsection (1)(d) or (e)” of “or paragraph (b) or (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.
6. Section 5 of the Act is hereby amended by the insertion in subsection (2) after “of this Act” of “or paragraph (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.

The Minister for Finance consents to the making of the foregoing Regulations.



GIVEN under the Official Seal of the Minister for Finance, this 31st day of October, 1998.

CHARLIE McCREEVY,
Minister for Finance.



GIVEN under the Official Seal of the Minister for Health and Children, this 28th day of October, 1998.

BRIAN COWEN,
Minister for Health and Children.

APPENDIX II

Settlement Arrangements made by the Minister for Health and Children under Section 8 of the Hepatitis C Compensation Tribunal Act 1997

Introduction

The settlement arrangements provide for the settlement of claims in respect of general and special damages only. The arrangements will operate as informally as possible and in a manner which ensures settlement offers are made as early as possible.

Supporting Documentation

Where a claimant advises the Secretary to the Tribunal that she or he wishes to settle, the claimant will be required to furnish to the Secretary a full brief of the documentation on which the claim is based including complete documentation in support of claims for general and special damages. A claimant may opt for a single lump sum award or a provisional award by way of settlement.

Causation

The claim together with all supporting documentation will be referred to a member of the Tribunal. The claimant will be required to establish to the satisfaction of the Tribunal member, that she or he meets the criteria set out in Section 4 of the Act.

Where the Tribunal member is not satisfied that the claimant meets the criteria set out in Section 4 of the Act, the claim will be referred to the Tribunal for a decision on causation and, if the claimant so wishes, for an award by the Tribunal, where appropriate. Where the claimant so wishes, a claim may be returned for settlement following a determination by the Tribunal on causation.

Where the Tribunal decides that the claimant is not entitled to compensation under the Act, the claimant may appeal that decision to the High Court.

Settlement Offer

Settlement offers will be based on the same criteria applied by the Tribunal under section 5 of the Act in relation to the level of awards. The Secretary to the Tribunal will advise the claimant of her/his legal representative in writing of the settlement offer.

Acceptance of Settlement Offer

The claimant will be requested to indicate, in writing, acceptance or rejection of the settlement within 28 days of the date of the offer.

Where the claimant accepts the offer, she or he will sign the necessary waivers in respect of any right of action which the claimant might otherwise have had.

The Secretary to the Tribunal will note that the offer has been accepted and will arrange for the Tribunal to make an award on consent of the settlement amount.

In the case of a claimant who is a minor, the acceptance of an award shall be subject to the approval of the High Court.

Rejection of settlement

Where the claimant does not advise the Secretary within 28 days of the date of the settlement offer it will be taken that the claimant has rejected the offer and is seeking a Tribunal hearing.

Where a claimant rejects an offer, or is deemed to have rejected an offer, the claim will be referred by the Secretary to the Tribunal for a hearing unless he is instructed otherwise by the claimant.

Where a claimant rejects a settlement or is deemed to have rejected a settlement, the claimant will be deemed to have exhausted the arrangements for settlement under Section 8.

Reparation Fund

A claimant who accepts a settlement offer may apply to the Secretary to have an amount of 20% of the settlement offer paid out of the Reparation Fund established under section 11 of the Act. Alternatively, the claimant may apply to have a claim for aggravated or exemplary damages decided by the Tribunal under section 5.

Representative Claim

The Secretary to the Tribunal may accept a claim representative of a class or group of claimants where the circumstances which have given rise to their claims are broadly similar. Similar arrangements to those set out above will apply in such cases. The rights of each individual claimant to accept or reject a settlement and the rights of each claimant under any other provision of the Act are preserved.

Costs

Where a Tribunal makes an award based on a settlement offer, costs will be awarded on the same basis and using the same procedures as if it had heard the claim under the Act. Similarly, the Tribunal will take into account costs incurred in opting for settlement where a claimant has rejected a settlement offer.

Confidentiality

In cases where the offer is not accepted by the claimant and the case is referred for a full hearing by the Tribunal, the Tribunal member who was involved in the settlement arrangements will not be a member of the division of the Tribunal hearing the claim. The Tribunal will not be made aware that the claimant applied for a settlement or that she/he rejected a settlement.

The confidentiality of the case is guaranteed under Section 8(2) of the Act which provides as follows:

“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.”

This means that the Tribunal member who is involved in a settlement is not permitted to give any information (including details of any offer which was made to the claimant) to anyone who is not involved in the settlement, or to discuss the case with the other Tribunal members.

APPENDIX III

HEPATITIS C COMPENSATION TRIBUNAL

ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31 DECEMBER 1999

ACCOUNTING POLICIES

Basis of Accounts

The accounts are a cash-based record of the Receipts and Payments in the period.

Reporting Period

The reporting period is the year ending 31 December 1999.

Receipts

Receipts for the period represent those monies claimed and received from the Special Account and the Reparation Fund established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997.

Payments

Payments consist of those sums which have been discharged during the period i.e. where the payable order has been drawn.

Suspense Account at Department of Health and Children

Payments are made by the Department of Health and Children on behalf of the Hepatitis C Compensation Tribunal at the direction of either, the Hepatitis C Compensation Tribunal or, in respect of legal costs only, the Office of the Chief State Solicitor. These payments are made from a suspense account, which forms part of the Appropriation Account of the Department of Health and Children and is subject to audit by the Comptroller and Auditor General.

HEPATITIS C COMPENSATION TRIBUNAL

<u>Accounts of Receipts and Payments for the year ended 31 December 1999</u>		1999 IR£	1998 IR£
Payments			
Tribunal Awards		34,039,312	83,214,656
Number of Awards		214	535
Reparation Fund payments		7,032,056	19,885,873
Number of Awards		220	686
Legal costs of Tribunal awards		7,863,778	12,873,463
Number of cases		315	512
<u>Administrative costs</u>			
Pay	Note 1	1,002,232	1,508,391
Non-Pay	Note 2	319,438	239,001
Total Payments		50,256,816	117,721,384
<u>Receipts</u>			
Received from Special Account established under Section 10 of the Hepatitis C Compensation Tribunal Act, 1997		8,900,000	101,600,000
Received from Reparation Fund established under Section 11 of the Hepatitis C Compensation Tribunal Act, 1997		1,600,000	23,900,000
Total Receipts		10,500,000	125,500,000
Surplus/(Deficit) for year		(39,756,816)	7,778,616
Surplus/(Deficit) brought forward from previous year		(10,588,335)	(18,366,951)
Surplus/(Deficit) carried forward to following year		(50,345,151)	(10,588,335)
<u>Financed by</u>			
Suspense Account at Department of Health and Children			
This sum represents the amount to be drawn from the relevant accounts established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997.			

HEPATITIS C COMPENSATION TRIBUNAL

Accounts for the year ended 31 December 1999

Notes to the Accounts

	1999	1998
	IR£	IR£
Note 1 Pay		
Chairman's salary and Fees paid to Tribunal Members Note 3	853,335	1,393,468
Administration	148,897	114,923
Total Pay	1,002,232	1,508,391
Note 2 Non-Pay		
Advertising	169,492	39,791
Stenography services	59,015	130,214
Phones	5,155	5,334
Postage	1,119	186
Computers	24,108	2,573
Photocopying	10,758	1,815
Office machinery	683	357
Heat, Power & Light	4,431	4,996
Contract Cleaning	4,133	3,536
Office Supplies	5,025	4,576
Printing	2,406	190
Furniture and fittings	654	4,878
Travel and Subsistence	11,660	19,077
Courier Services	2,166	2,568
Vending machine and water supplies	1,883	2,924
Confidential waste disposal	674	568
Fees to Expert Witnesses	530	0
Maintenance	5,205	9,915
Room hire	3,271	5,400
Miscellaneous	6,994	103
Total Non-Pay	319,362	239,001

Note 3 Income Tax and Professional Services Withholding
 Tax deductions are included in the relevant suspense accounts at the Department of Health and Children. A total of £7,045 was withheld for payment to the Revenue Commissioners at 31/12/99.

APPENDIX IV

Summary of Awards, Reparation Fund Payments and Legal Costs to date

Awards

<u>Year</u>	<u>No. of Awards Paid</u>	<u>Amount Paid</u> £
1996	204	22,545,670
1997	327	44,633,406
1998	535	83,214,656
1999	214	34,039,312
Total	1,280	184,433,044

This sum is inclusive of increases in compensation awarded by the High Court on appeal and also as a result of applications made to the Tribunal pursuant to Section 6 (3) of the Hepatitis C Compensation Tribunal Act, 1997.

Reparation Fund

<u>Year</u>	<u>No. of Payments</u>	<u>Amount Paid</u> £
1997	340	9,428,591
1998	686	19,885,873
1999	220	7,032,056
Total	1,246	36,346,520

This sum is inclusive of payments made as a result of increases in compensation awarded by the High Court on appeal and also of payments made as a result of applications made to the Tribunal pursuant to Section 6 (3) of the Hepatitis C Compensation Tribunal Act, 1997.

Legal Costs

<u>Year</u>	<u>No. of Claims</u>	<u>Amount Paid</u> £
1996	93	1,368,667
1997	275	5,921,448
1998	512	12,873,463
1999	315	7,863,778
Total	1,195	28,027,356

This sum is inclusive of costs paid as a result of applications made to the Tribunal pursuant to Section 6 (3) of the Hepatitis C Compensation Tribunal Act, 1997.

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