AN BILLE ÁRACHAIS SLÁINTE (LEASÚ), 2012
HEALTH INSURANCE (AMENDMENT) BILL 2012

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

[No. 87 of 2012]

ACTS REFERRED TO

Companies Act 1963	1963, No. 33
Data Protection Acts 1988 and 2003	
Health Insurance Act 1994	1994, No. 16
Health Insurance Acts 1994 to 2011	
Health Insurance (Miscellaneous Provisions) Act 2009	2009, No. 24
Petty Sessions (Ireland) Act 1851	1851, (14 & 15) Vict. c.93
Stamp Duties Consolidation Act 1999	1999, No. 31
Taxes Consolidation Act 1997	1997, No. 13

AN BILLE ÁRACHAIS SLÁINTE (LEASÚ), 2012
HEALTH INSURANCE (AMENDMENT) BILL 2012

BILL

entitled

AN ACT TO AMEND THE HEALTH INSURANCE ACT 1994, IN PARTICULAR TO ENSURE THAT, IN THE INTERESTS OF SOCIETAL AND INTERGENERATIONAL SOLIDARITY, THE BURDEN OF THE COSTS OF HEALTH SERVICES BE SHARED BY INSURED PERSONS BY PROVIDING FOR A COST SUBSIDY BETWEEN THE MORE HEALTHY AND THE LESS HEALTHY, INCLUDING BETWEEN THE YOUNG AND THE OLD; TO PROVIDE, HAVING REGARD TO THE PRINCIPAL OBJECTIVE OF THE HEALTH INSURANCE ACT 1994, FOR RISK EQUALISATION CREDITS TO ENABLE THE LESS HEALTHY, INCLUDING THE OLD, TO HAVE ACCESS TO HEALTH INSURANCE COVER; TO PROVIDE FOR A MEANS WHEREBY ANY OVERCOMPENSATION TO REGISTERED UNDERTAKINGS OR FORMER REGISTERED UNDERTAKINGS ARISING FROM SUCH RISK EQUALISATION CREDITS SHALL BE REPAID; AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition.

1.—In this Act "Principal Act" means the Health Insurance Act 1994.

Amendment of section 1A of Principal Act.

2.—Section 1A of the Principal Act is amended—

(*a*) by substituting the following subsection for subsection (1):

"(1) The principal objective of this Act is to ensure that, in the interests of the common good and across the health insurance market, access to health insurance cover is available to consumers of health services with no differentiation made between them (whether effected by risk equalisation credits or stamp duty measures or other measures, or any combination thereof), in particular as regards the costs of health services, based in whole or in part on the health risk status, age or sex of, or frequency of provision of health services to, any such consumers or

any class of such consumers, and taking into particular account for the purposes of that objective—

(*a*) the fact that the health needs of consumers of health services increase as they become less healthy, including as they approach and enter old age,

(*b*) the desirability of ensuring, in the interests of societal and intergenerational solidarity, and regardless of the health risk status or age of, or frequency of provision of health services to, any particular generation (or part thereof), that the burden of the costs of health services be shared by insured persons by providing for a cost subsidy between the more healthy and the less healthy, including between the young and the old, and, without prejudice to the generality of that objective, in particular that the less healthy, including the old, have access to health insurance cover by means of risk equalisation credits,

(*c*) the manner in which the health insurance market operates in respect of health insurance contracts, both in relation to individual registered undertakings and across the market, and

(*d*) the importance of discouraging registered undertakings from engaging in practices, or offering health insurance contracts, whether by segmentation of the health insurance market (by whatever means) or otherwise, which have as their object or effect the favouring of the coverage by the undertakings of the health insurance risk of the more healthy, including the young, over the coverage of the health insurance risk of the less healthy, including the old.",

and

(*b*) in subsection (2), by deleting "specified in subsection (1)".

Amendment of section 2 of Principal Act.

3.—Section 2 of the Principal Act is amended—

(*a*) in subsection (1)—

(i) in the definition of "community rating", by deleting "specified in section 1A(1)",

(ii) by substituting the following definition for the definition of "net premium":

" 'net premium'—

(*a*) in relation to a health insurance contract effected for a period other than a period commencing on or after 1 January 2013, means the premium payable under the contract in respect of an individual in any year of assessment after—

(i) the deduction made from the premium to which the individual is entitled, for that year of assessment, by virtue of section 470 of the Taxes Consolidation Act 1997, and

(ii) the deduction (if any) made from the premium to which the individual is entitled, for that year of assessment, by virtue of section 470B of the Taxes Consolidation Act 1997,

(*b*) in relation to a health insurance contract effected for a period commencing on or after 1 January 2013, means the premium payable under the contract in respect of an individual in any year of assessment after—

(i) the deduction made from the premium to which the individual is entitled, for that year of assessment, by virtue of section 470 of the Taxes Consolidation Act 1997, and

(ii) taking into account the part (if any) of the premium which the individual is entitled not to have collected from the policy holder concerned, for that year of assessment, by virtue of section 11C(1);",

(iii) by deleting the definitions of "risk equalisation" and "scheme":

and

(iv) by inserting the following definitions:

" 'frequency of provision of health services' includes history of health insurance claims;

'health risk status', in relation to any person (howsoever described), includes—

(*a*) the present use of, or likely future use of, hospital services by the person,

(*b*) the sexual orientation of the person, and

(*c*) the suffering or prospective suffering of the person from a chronic illness or other medical condition or from an illness or medical condition of a particular kind;

'principal objective' means the principal objective specified in section 1A(1);

'risk equalisation credits' has the meaning assigned to it by section 6A(1);

'Risk Equalisation Scheme' shall be construed in accordance with section 11A;",

and

(*b*) by adding the following subsection after subsection (2):

"(3) In this Act a reference to—

(*a*) a disease includes a reference to an illness, and

(*b*) an illness includes a reference to a disease.".

Amendment of section 3 of Principal Act.

4.—Section 3 of the Principal Act is amended—

(*a*) in subsection (2), by inserting "(or, in the case of regulations under section 11E, the Authority)" after "the Minister",

(*b*) in subsection (3), by deleting "(other than a regulation referred to in subsection (4))", and

(*c*) by deleting subsection (4).

Offences.

5.—(1) The Principal Act is amended by substituting the following section for section 4:

"Offences.

4.—(1) A person who contravenes a provision of this Act shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(2) A person who contravenes a provision of a regulation under this Act stated to be a penal regulation shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(3) A person who, after conviction for an offence under subsection (1) or (2), continues to contravene the provision concerned, shall be guilty of an offence on each day on which the contravention continues and for each such offence shall be liable—

(*a*) on summary conviction, to a class E fine, or

(*b*) on conviction on indictment, to a fine not exceeding €50,000.

(4) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary

or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(6) The Authority may bring and prosecute summary proceedings for an offence under this Act.

(7) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted—

(*a*) within 12 months from the date on which the offence was committed, or

(*b*) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(8) For the purposes of subsection (7)(*b*), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be deemed to be so signed and admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(9) On convicting a person of an offence under this Act, the court shall unless satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Authority the costs and expenses, measured by the court, incurred by the Authority in relation to the investigation, detection and prosecution of the offence.".

(2) Subsection (1), in so far as it relates to the amendment of the Principal Act, shall come into operation 30 days after the passing of this Act.

Interpretation of Part II.

6.—The Principal Act is amended by substituting the following section for section 6A:

"6A.—(1) In this Part and Schedules 3 and 4—

'advanced cover' has the meaning assigned to it by section 11E(4);

'age group' means age group as prescribed in regulations made under section 7D, and includes any age group, whether or not by reference to any one or more of the following:

(*a*) being less than a specified age;

(*b*) being of a specified age or over such age but under another specified age; or

(*c*) being of a specified age or over such age;

'age-related tax credit' has the same meaning as in section 470B(4) of the Taxes Consolidation Act 1997;

'approved accounting standards' means accounting standards which are in accordance with generally accepted accounting principles in the State;

'changed existing contract' has the meaning assigned to it by section 7AB(2)(*a*);

'cumulative net financial impact', in relation to a registered undertaking or former registered undertaking which has furnished the Authority with information under section 7F(1) in respect of a period, means the difference between—

(*a*) the total amount of the age-related tax credits and risk equalisation credits recorded in accounts for that undertaking in respect of that period as extracted from that information by the undertaking in respect of that period, and

(*b*) the total amount of the stamp duty referred to in section 125A of the Stamp Duties Consolidation Act 1999 recorded in accounts for that undertaking in respect of that period as extracted from that information by the undertaking in respect of that period;

'draft report' has the meaning assigned to it by section 7F(7);

'Fund' means the Risk Equalisation Fund established under section 11D;

'hospital bed utilisation credit' means the relevant amount payable from the Fund in respect of each hospital stay involving an overnight stay in a hospital bed in private hospital accommodation by an insured person where the insured person is such a person under a health insurance contract effected for any period commencing on or after 1 January 2013;

'information return' means an information return referred to in section 7D(1);

'positive', in relation to the cumulative net financial impact on a registered undertaking or former registered undertaking which

has submitted one or more information returns to the Authority in respect of a period, means that, for that period and that undertaking, the amount specified in paragraph (*a*) of the definition of 'cumulative net financial impact' in this subsection exceeds the amount specified in paragraph (*b*) of that definition;

'private hospital accommodation' has the meaning assigned to it by section 11E(4);

'relevant amount', in relation to the definition of 'hospital bed utilisation credit' in this section and an insured person referred to in that definition, means the lower of the following:

(*a*) the amount specified in Schedule 3 for the purposes of that definition multiplied by the number of nights the insured person stayed in private hospital accommodation which fall within the hospital stay concerned referred to in that definition;

(*b*) the sum of all benefits paid under the health insurance contract concerned referred to in that definition in respect of hospital in-patient services provided during the hospital stay concerned referred to in that definition of the insured person;

'relevant contract' has the meaning assigned to it by section 125A(1) of the Stamp Duties Consolidation Act 1999;

'relevant contract (advanced cover)' means a relevant contract which is not a relevant contract (non-advanced cover);

'relevant contract (non-advanced cover)' means a relevant contract which falls within a type of relevant contract specified in regulations under section 11E as a type of relevant contract in respect of which the Authority is satisfied under that section that it does not provide for advanced cover;

'relevant financial provisions' means—

(*a*) the Risk Equalisation Scheme,

(*b*) section 125A of the Stamp Duties Consolidation Act 1999, or

(*c*) section 470B of the Taxes Consolidation Act 1997,

or any combination of any of the Risk Equalisation Scheme (including any constituent provision of the Scheme) and any section referred to in paragraph (*b*) or (*c*);

'relevant market sector', in relation to information returns made to the Authority for any period of 6 months referred to in section 7D(1), means all the registered undertakings or former registered undertakings which have made those returns;

'relevant period' has the meaning assigned to it by section 7D(1)(*b*);

'risk equalisation credits'—

(*a*) in relation to an individual insured under a health insurance contract effected by a registered undertaking for any period commencing on or after 1 January 2013, means—

(i) the payment from the Fund to the undertaking on behalf of the individual of any hospital bed utilisation credits which the individual is entitled to have so paid, and

(ii) the payment from the Fund of the part (if any) of the premium payable under the contract which the individual is entitled to have so paid by virtue of section 11C(1), and

(*b*) in relation to such undertaking and such contract, means—

(i) the amount of the hospital bed utilisation credits (if any) referred to in paragraph (*a*)(i), and

(ii) the amount of the part (if any) of the premium payable referred to in paragraph (*a*)(ii) that it has not collected from the policy holder by virtue of section 11C(1);

'type of cover' means a specific health insurance contract which provides for the payment of prescribed benefits where either—

(*a*) the particulars relating to the contract are contained in The Register of Health Insurance Contracts, or

(*b*) the particulars relating to the contract were once contained in that Register but, notwithstanding that such particulars are no longer contained in that Register, prescribed benefits are still payable under the contract.

(2) Reasonable profit shall be determined under section 7F(4) in accordance with—

(*a*) Article 33 of the European Union framework for State aid in the form of public service compensation (2011) (2012/C8/03)[1] (the text of which is set out for convenience of reference in Schedule 2), and

(*b*) any factors that are prescribed as factors that may be taken into account for the purposes of so determining reasonable profit in accordance with the said Article.".

Amendment of section 7 of Principal Act.

7.—Section 7 of the Principal Act is amended—

(*a*) in subsection (1)(*a*)—

(i) in subparagraph (i)(I), by substituting "90" for "31", and

(ii) in subparagraph (ii)(II), by deleting "specified in section 1A(1)",

[1]OJC 8/04, 11.01.2012, p. 15.

and

(*b*) in subsection (3), by substituting the following paragraph for paragraphs (*a*) and (*b*):

"(*a*) the health risk status, age or sex of, or frequency of provision of health services to, a person, or".

Amendment of section 7A of Principal Act.

8.—Section 7A of the Principal Act is amended, in subsection (4), by substituting the following paragraph for paragraph (*b*):

"(*b*) the insured person has previously effected or been named in a health insurance contract with a restricted membership undertaking.".

Submission of new type of health insurance contract to Authority, etc.

9.—The Principal Act is amended by substituting the following section for section 7AB:

"7AB.—(1) A registered undertaking shall not offer in the State a new type of health insurance contract (and regardless of whether the contract is already offered outside the State by the undertaking or any other person) unless it has submitted a sample of the contract to the Authority not later than 90 days (or, if the sample of the contract is so submitted in 2012 before 18 October 2012, not later than 75 days) before first making such offer.

(2) Subject to subsection (3), a registered undertaking shall not change in any material particular the benefits payable under a type of health insurance contract that it offers in the State unless—

(*a*) it has submitted a sample of the contract as so changed (in this Act referred to as a 'changed existing contract') to the Authority not later than 90 days (or, if the changed existing contract is so submitted in 2012, not later than 75 days) before 1 January of the year immediately following the year in which it so submitted the changed existing contract, and

(*b*) the change is to take effect on 1 January of the year immediately following the year in which it so submitted the changed existing contract.

(3) (*a*) Subsection (2) does not apply to a type of health insurance contract which is a type of relevant contract (advanced cover) if the change concerned is an increase in (including an increase in by way of an addition to) the benefits payable under that type of relevant contract (advanced cover).

(*b*) Subsection (2) does not apply to a type of health insurance contract which is a type of relevant contract (non-advanced cover) if the change concerned is not an increase in (including an increase in by way of an addition to) the benefits payable under that type of relevant contract (non-advanced cover) in respect of private hospital accommodation in a private hospital.

(4) Where in any year a registered undertaking submits a changed existing contract to the Authority purporting to be pursuant to subsection (2) but later than 90 days (or, if the changed existing contract is so submitted in 2012, later than 75 days) before 1 January of the year immediately following the year in which it so submitted the changed existing contract, the changed existing contract shall be deemed to have been received on 1 January of the year immediately following the year in which it was so submitted and subsection (2) and section 11E(3) shall, with all necessary modifications, apply to the changed existing contract as if it were submitted to the Authority on that 1 January.

(5) The reference in subsection (1) to a new type of health insurance contract includes a health insurance contract which has been changed in any material particular subsequent to the submission of a sample of the contract to the Authority pursuant to this section (including section 7AB as in force at any time before the commencement of section 9 of the *Health Insurance (Amendment) Act 2012*).

(6) Notwithstanding subsections (1) to (5) but without prejudice to section 7(1)(*a*), a registered undertaking may vary the premium payable for effecting a type of health insurance contract if it gives notice in writing of the variation to the Authority not less than 30 days before the variation takes effect.

(7) Notwithstanding subsections (1) to (5), a registered undertaking which has made an offer in the State to effect a health insurance contract of a particular type and which has maintained the offer for not less than the 90 consecutive days required by section 7(1)(*a*)(i)(I) may cease to make that offer in the State if it gives notice in writing of the cesser to the Authority not less than 30 days before the cesser takes effect.

(8) Without prejudice to the operation of subsection (7), the notice in writing required to be given to the Authority under that subsection by a registered undertaking in respect of a cesser referred to in that subsection may be given before the expiration of the 90 consecutive days referred to in that subsection.

(9) Nothing in subsection (7) shall be construed to prejudice a health insurance contract of the type referred to in that subsection effected before the cesser referred to in that subsection takes effect and, accordingly, the contract continues in being in accordance with the terms and conditions on which it was effected.".

Amendment of section 7AC of Principal Act.

10.—Section 7AC of the Principal Act is amended, in subsection (2), by substituting "Subject to section 11E, The Register" for "The Register".

Amendment of section 7C of Principal Act.

11.—Section 7C of the Principal Act is amended, in subsection (5)—

(*a*) in paragraph (*a*), by substituting "Act 1997," for "Act 1997, or"

and

(*b*) by inserting the following paragraph after paragraph (*a*):

"(*aa*) for the purposes of making a claim referred to in section 11C(2), or".

Amendment of section 7D of Principal Act.

12.—Section 7D of the Principal Act is amended, in subsection (2), by substituting the following paragraph for paragraph (*b*):

"(*b*) the total number of persons insured, or a class thereof, in each age group, the gender profile of each age group, and the type of cover of each age group, in respect of the relevant period,".

Amendment of section 7E of Principal Act.

13.—Section 7E of the Principal Act is amended—

(*a*) in subsection (1)—

(i) in paragraph (*a*), by deleting subparagraphs (i) to (v) and substituting the following:

"(i) the average insurance claim payment per insured person made by the relevant market sector during the relevant periods in respect of the total number of persons insured, or a class thereof, during the relevant periods,

(ii) the average insurance claim payment per insured person made by the relevant market sector during the relevant periods in respect of subgroups of the total number of persons insured, or a class thereof, during the relevant periods, where such subgroups include such combinations of the following groups of insured persons as the Authority determines to be relevant:

(I) those in different age groups;

(II) those of differing sex;

(III) those with differing types of cover,

(iii) the hospital bed utilisation in respect of each group and subgroup referred to in subparagraphs (i) and (ii), and

(iv) the net financial impact on each registered undertaking or former registered undertaking of the relevant financial provisions during the relevant periods, and",

and

(ii) in paragraph (*b*)—

(I) by substituting the following subparagraph for subparagraph (iii):

"(iii) subject to subsection (1A), the amounts of the risk equalisation credits that the Authority considers, after having regard to such evaluation and analysis, would need to be afforded, under the Risk Equalisation Scheme, to persons insured by registered undertakings (other than restricted membership undertakings) having regard to the principal objective (in so far as the principal objective relates to relevant contracts), the aim of avoiding overcompensation being made to a registered undertaking or former registered undertaking under the operation of the relevant financial provisions (other than section 470B of the Taxes Consolidation Act 1997), the aim of maintaining the sustainability of the health insurance market and the aim of having fair and open competition in the health insurance market, and", and

(II) in subparagraph (iv)—

(A) by inserting ", after having regard to the aim of avoiding the Fund sustaining surpluses or deficits from year to year (as calculated using approved accounting standards)," after "the Authority considers", and

(B) by deleting "Exchequer" and substituting "Fund",

and

(*b*) by substituting the following subsections for subsections (1A) and (2):

"(1A) The Minister may, by notice in writing given to the Authority, require the Authority to prepare any report to be furnished to him or her pursuant to paragraph (*b*) of subsection (1), in so far as the report relates to subparagraph (iii) of that paragraph—

(*a*) in the case of hospital bed utilisation credits, on the basis of the amount specified in the notice or on the basis of the amount specified in Schedule 3 or both,

(*b*) on the basis of the classes of insured person specified in the notice or on the basis of the classes of insured person specified in column 1 of the Table set out in Schedule 4 or both,

(2) The Minister shall—

(*a*) first, after having regard to—

(i) the principal objective (in so far as the principal objective relates to relevant contracts),

(ii) any report furnished to him or her pursuant to subsection (1)(*b*),

(iii) the aim of avoiding overcompensation being made to a registered undertaking or former registered undertaking under the operation of the relevant financial provisions (other than section 470B of the Taxes Consolidation Act 1997),

(iv) the aim of maintaining the sustainability of the health insurance market,

(v) the aim of having fair and open competition in the health insurance market, and

(vi) the aim of avoiding the Fund sustaining surpluses or deficits from year to year (as calculated using approved accounting standards),

(*b*) second, after taking into account the amendments (if any) that he or she wishes to propose to the relevant financial provisions (other than section 470B of the Taxes Consolidation Act 1997) in view of the regard given the matters referred to in paragraph (*a*) (and whether or not those amendments accord with any matter set out in the report referred to in paragraph (*a*)(ii)), and

(*c*) third, after consultation with the Minister for Finance on the amendments (if any) referred to in paragraph (*b*),

make such recommendations to the Minister for Finance relating to section 125A of the Stamp Duties Consolidation Act 1999 as the Minister considers appropriate.".

Amendment of section 7F of Principal Act.

14.—Section 7F of the Principal Act is amended—

(*a*) in subsection (1)—

(i) in paragraphs (*a*)(i) and (*b*)(i), by deleting "which falls within paragraph (*b*) of section 7D(1)", and

(ii) in paragraph (*c*), by inserting ", in respect of health insurance contracts effected for any period before 1 January 2013, or receiving risk equalisation credits" after "age-related tax credits",

(*b*) by substituting the following subsection for subsection (4):

"(4) (*a*) The Authority shall, as soon as may be after the expiration of 2012, determine what would constitute a reasonable profit for a registered undertaking in respect of its health insurance

business in the State in respect of the period from 1 January 2010 to the end of 2012.

(*b*) The Authority shall, as soon as may be after the expiration of 2013, determine what would constitute a reasonable profit for a registered undertaking in respect of its health insurance business in the State in respect of the 3 year period from 1 January 2011 to the end of 2013.

(*c*) Paragraph (*b*) shall, with all necessary modifications, apply to each relevant 3 year period as it applies to the 3 year period referred to in that paragraph.",

(*c*) in subsection (5), by substituting the following paragraph for paragraph (*b*):

"(*b*) as soon as may be, make a determination as to whether or not the cumulative net financial impact of the relevant financial provisions on a registered undertaking or former registered undertaking is positive for—

(i) if paragraph (*a*) of subsection (4) is applicable, the period from 1 January 2010 to the end of 2012,

(ii) if paragraph (*b*) of subsection (4) is applicable, the period from 1 January of 2011 to the end of 2013, or

(iii) if paragraph (*c*) of subsection (4) is applicable, the period from 1 January of the first year of the relevant 3 year period to the end of the last year of the relevant 3 year period,

to which the information furnished to it under subsection (1) relates and, if so, the amount by which the cumulative net financial impact is positive.",

(*d*) in subsections (7)(*e*), (10) and (11), by substituting "the Fund" for "the Exchequer" wherever it appears, and

(*e*) by inserting the following after subsection (13):

"(14) In this section 'relevant 3 year period' means—

(*a*) the period from 1 January 2012 to the end of 2014,

(*b*) the period from 1 January 2013 to the end of 2015,

(*c*) the period from 1 January 2014 to the end of 2016,

and so on for each succeeding 3 year period.".

15.—The Principal Act is amended by inserting the following sections after section 11: Amendment of Principal Act.

"Risk Equalisation Scheme.

11A.—This section and sections 11B to 11F, the regulations under section 11E, the regulations under section 11F, and Schedules 3 and 4, shall comprise a scheme (to be known as the 'Risk Equalisation Scheme') for the purposes of assisting in the achievement of the principal objective.

Application of Risk Equalisation Scheme.

11B.—(1) Subject to subsection (2), the Risk Equalisation Scheme shall apply to—

(*a*) each registered undertaking, and

(*b*) each undertaking that has ceased to be a registered undertaking but was a registered undertaking at any time when the Scheme was in force.

(2) The Risk Equalisation Scheme shall not apply to a restricted membership undertaking.

(3) The Risk Equalisation Scheme shall not apply to so much of the activities of a registered undertaking as consist of effecting health insurance contracts where such a contract—

(*a*) either of itself or as construed with any linked or related other health insurance contract, makes no provision for the making of in-patient indemnity payments, or

(*b*) relates solely to the public hospital daily in-patient charges made under the Health (In-patient Charges) Regulations 1987 (S.I. No. 116 of 1987).

Payment from Fund of risk equalisation credits.

11C.—(1) Where a registered undertaking effects a relevant contract for any period commencing on or after 1 January 2013, it shall, in respect of each insured person who falls within a class of insured person specified in column 1 of the Table set out in Schedule 4, not collect from the policy holder such part of the premium payable (or, if that premium is payable by instalments, not so collect pro rata from the instalments) in respect of the provision of health insurance cover under that contract to that person—

(*a*) as is equal to the amount (if any) specified in column 2 of that Table opposite that class of insured person, and

(*b*) on the basis that that part of the premium payable is payable from the Fund,

(2) A registered undertaking or former registered undertaking may, in accordance with the regulations under section 11F, make a claim to the Authority to be paid an amount equal to its risk

equalisation credits for the period to which the claim relates.

(3) Where the Authority receives a claim referred to in subsection (2) from a registered undertaking or former registered undertaking, it shall, in accordance with the regulations under section 11F, pay out of the Fund to the undertaking that amount that the Authority is satisfied is so payable, in accordance with the Risk Equalisation Scheme, in respect of the risk equalisation credits to which the claim relates.

(4) Information concerning the amounts of stamp duty paid by registered undertakings or former registered undertakings pursuant to section 125A of the Stamp Duties Consolidation Act 1999 shall, at the request of the Authority, be disclosed to the Authority by the Revenue Commissioners or a Revenue officer (within the meaning of section 851A of the Taxes Consolidation Act 1997) for the purposes of assisting the Authority in performing its functions under this Act.

Risk Equalisation Fund.

11D.—(1) The Authority shall establish, administer and maintain a fund to be known as the Risk Equalisation Fund (in this Act referred to as 'the Fund').

(2) The Authority shall open and maintain—

(*a*) subject to paragraph (*b*), an account (in this Act referred to as a 'current account') for all moneys paid into the Fund, and

(*b*) an account (in this Act referred to as an 'investment account') for such moneys (if any) that are not immediately required for the purposes of the current account.

(3) The National Treasury Management Agency may, at the request of the Authority and on the Authority's behalf, invest moneys (if any) in the investment account of the Fund and any income, capital or other benefit received in respect of moneys invested under this subsection shall be paid into the investment account or invested under this subsection as directed by the Authority.

(4) Subject to subsection (5), the following shall be paid into the Fund:

(*a*) all stamp duty paid, in respect of health insurance contracts effected to provide health insurance cover for any period commencing on or after 1 January 2013, by virtue of section 125A of the Stamp Duties Consolidation Act 1999; and

(*b*) any other moneys which may belong to or accrue to the Fund or be received by the Authority in respect of it (including any amount referred to in section 7F(10) or subsection (7)).

(5) (*a*) In this section 'special account' means the account (if any) established under paragraph (*d*).

(*b*) The Minister may, for the purpose of maintaining a sufficient amount of moneys in the current account of the Fund, having regard to the sums payable from the current account, request the Minister for Finance to advance moneys to the special account from the Central Fund.

(*c*) A request under paragraph (*b*) shall be approved by the Minister for Finance, following consultation with the Minister for Public Expenditure and Reform, before any moneys are advanced to the special account pursuant to a request under that paragraph.

(*d*) For the purposes of moneys advanced to the current account of the Fund pursuant to a request under paragraph (*b*), an account shall be established which shall be—

(i) in the name of the Minister, and

(ii) an account with the Paymaster General.

(*e*) The Minister shall, subject to such conditions as the Minister for Finance considers appropriate, manage and control the special account for the purpose of maintaining an amount of moneys in the current account of the Fund that is sufficient to meet the sums payable from that current account.

(*f*) Whenever the moneys in the current account of the Fund are insufficient to meet the sums payable from that account—

(i) there shall be paid into that account from the investment account of the Fund the moneys necessary to meet those sums payable, and

(ii) if there is still a shortfall in the current account of the Fund to meet those sums payable after the moneys in the investment account have been paid into it, there shall be paid into the current account

from the special account the moneys necessary to meet the shortfall.

(6) The following shall be paid out of the Fund:

(*a*) amounts payable to registered undertakings by virtue of section 11C(3);

(*b*) amounts payable to the Central Fund to repay moneys paid into the current account of the Fund from the special account;

(*c*) costs, charges and expenses incurred in maintaining, protecting, administering and applying the Fund; and

(*d*) other sums properly payable out of the Fund.

(7) Where it comes to the knowledge of the Authority that, for whatever reason, there has been a payment (including any part thereof) from the Fund to a registered undertaking or former registered undertaking which is not in accordance with this Act, the Authority may recover the amount concerned—

(*a*) as a simple contract debt in any court of competent jurisdiction from the registered undertaking or former registered undertaking concerned, or

(*b*) by deducting that amount from any payment from the Fund otherwise due to the registered undertaking or former registered undertaking concerned.

(8) The Authority shall keep all proper and usual accounts of all moneys paid into the Fund and disbursements from the Fund, including—

(*a*) an income and expenditure account,

(*b*) a cash-flow statement, and

(*c*) a balance sheet.

(9) As soon as may be after the end of each financial year of the Authority, the Authority shall submit—

(*a*) the accounts of the Fund to the Comptroller and Auditor General for audit, and

(*b*) a copy of an abstract of the accounts as so audited together with a copy of the report of the Comptroller and Auditor General thereon to the Minister.

(10) The Minister shall cause copies of the 2 documents referred to in subsection (9)(*b*) to be laid before each House of the Oireachtas as soon as may be after the documents are submitted to him or her by the Authority.

(11) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a registered undertaking or former registered undertaking which is a company being wound up, to be paid in priority to all other debts, all amounts payable to the Fund by virtue of section 7F(10) or subsection (7), and the Companies Act 1963 shall be construed accordingly.

Specification by Authority of certain health insurance contracts as not providing for advanced cover.

11E.—(1) The Authority shall, before 1 January 2013—

(*a*) first, evaluate and analyse each type of relevant contract on offer in the State in order to ascertain, to the Authority's satisfaction, whether that type of relevant contract does not provide for advanced cover, and

(*b*) second, if the Authority is satisfied that that type of relevant contract does not provide for advanced cover—

(i) by regulations specify that the Authority is satisfied that that type of relevant contract does not provide for advanced cover, and

(ii) after making such regulations, enter particulars in The Register of Health Insurance Contracts to indicate that that type of relevant contract has been so specified as not providing for advanced cover.

(2) Where a sample of a new type of relevant contract is submitted to the Authority under section 7AB(1), the Authority shall, before the expiration of 90 days (or, if the sample of the contract is so submitted in 2012 before 18 October 2012, before the expiration of 75 days) after the sample was so submitted—

(*a*) first, evaluate and analyse the new type of relevant contract in order to ascertain, to the Authority's satisfaction, whether that type of relevant contract does not provide for advanced cover, and

(*b*) second, if the Authority is satisfied that that type of relevant contract does not provide for advanced cover—

(i) by regulations specify that the Authority is satisfied that that

type of relevant contract does not provide for advanced cover, and

(ii) after making such regulations, enter particulars in The Register of Health Insurance Contracts to indicate that that type of relevant contract has been so specified as not providing for advanced cover.

(3) Where a changed existing contract which is a relevant contract is submitted to the Authority under section 7AB(2), the Authority shall, before 1 January of the year immediately following the year in which the changed existing contract was so submitted—

(*a*) first, evaluate and analyse that type of relevant contract in order to ascertain, to the Authority's satisfaction, whether that type of relevant contract does not provide for advanced cover, and

(*b*) second, if the Authority is satisfied that that type of relevant contract does not provide for advanced cover—

(i) by regulations specify that the Authority is satisfied that that type of relevant contract does not provide for advanced cover, and

(ii) after making such regulations, enter particulars in The Register of Health Insurance Contracts to indicate that that type of relevant contract has been so specified as not providing for advanced cover.

(4) In this section—

'advanced cover', in relation to a relevant contract, means that the contract provides health insurance cover for private hospital accommodation referred to in paragraph (*a*) of the definition of 'private hospital accommodation' in this subsection in respect of most health services that are ordinarily provided in a private hospital setting, such that, under the contract, such a health service so covered could be provided in private hospital accommodation referred to in that paragraph such that any shortfall in such cover that would arise would not be substantial;

'private hospital accommodation' means—

(*a*) accommodation in a private hospital, whether or not in a bed, or

(*b*) accommodation in a publicly funded hospital in a bed which is designated, pursuant to Article (8)(i) of the Health Services (In-Patient) Regulations 1991

(S.I. No. 135 of 1991), as a designated private bed.

Scheme regulations.

11F.—The Minister may make regulations relating to the making and determination of claims referred to in section 11C(2), including, without prejudice to the generality of the foregoing—

(*a*) the minimum or maximum periods, or both, to which the claims, or a class of the claims, may relate,

(*b*) the form of the claims or a class of the claims, and

(*c*) the documents to accompany the claims or a class of the claims to verify, or assist in verifying, any matters stated in the claims or a class of the claims, as the case may be, by registered undertakings or former registered undertakings or a class of registered undertakings or former registered undertakings.".

Amendment of section 17 of Principal Act.

16.—Section 17(4) of the Principal Act is amended by deleting "(but not including payments referred to in section 12(4)(*a*)(ii))".

Appointment and powers of authorised officers.

17.—The Principal Act is amended by inserting the following Part after Part IIIA:

"PART IIIB

Authorised officers of Authority.

18E.—(1) The Authority may appoint in writing such and so many persons to be authorised officers for the purposes of all or any of the provisions of this Act (including any regulations made under this Act) as it thinks appropriate and such appointment may be specified to be for a fixed period.

(2) Every authorised officer appointed under this section shall be furnished with a warrant of appointment and shall, when exercising any power conferred on him or her by or under this Act, if requested by a person affected, produce the warrant of appointment or copy of it to that person.

(3) An appointment under this section as an authorised officer shall cease—

(*a*) if the Authority revokes the appointment,

(*b*) if the appointment is for a fixed period, on the expiry of that period, or

(*c*) if the person appointed ceases to be an employee or agent of the Authority.

Powers of authorised officers.

18F.—(1) The powers conferred by this section may be exercised in respect of any registered undertaking or former registered undertaking for the purpose of—

(*a*) securing the enforcement of the provisions of this Act (including regulations made under this Act), or

(*b*) enabling or assisting the Minister or the Authority to perform any of their respective functions under this Act.

(2) An authorised officer may do all or any of the following:

(*a*) subject to subsection (3), at all reasonable times enter any premises, at which there are reasonable grounds for believing that any books, records or other documents in relation to the issue of any health insurance contract, or in relation to the acceptance of any premium in respect of a health insurance contract, are kept, and search and inspect the premises and such books, records or other documents on the premises;

(*b*) secure for later inspection any premises or any part of a premises in which books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;

(*c*) require any person to whom this section applies or any person employed by such person to produce to the authorised officer such books, records or other documents and in the case of information in a non-legible form to reproduce it in a legible form or to give to the officer such information or explanation as the officer may reasonably require in relation to any entries in such books, records or other documents;

(*d*) inspect and take copies of or extracts from, or remove for a reasonable period for further examination, any books, records, data (within the meaning of the Data Protection Acts 1988 and 2003) or other documents in whatever form kept (including, in the case of information in a non-legible form, a copy of or extract from such information in a permanent legible form)

which the officer finds or which is produced to the officer in the course of inspection;

(*e*) require any person to whom this section applies or any person employed by such person to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such books, records or other documents;

(*f*) require any person to whom this section applies to give to the authorised officer any information which the authorised officer may require in regard to the business or activity concerned or in regard to the persons carrying on such business or activity or employed in connection therewith;

(*g*) require any person by whom or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer reasonable assistance in relation thereto;

(*h*) summon, at any reasonable time, any other person employed in connection with the business or activity concerned to give to the authorised officer any information which the officer may reasonably require in regard to such business or activity and to produce to the authorised officer any books, records or other documents which are in that person's power or control;

(*i*) require any person employed in the premises concerned to prepare a report on aspects of the business specified by the authorised officer or activities of a person to whom this section applies or to explain entries in any books, records, documents or other materials furnished.

(3) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant issued by a judge of the District Court under subsection (8) authorising such entry.

(4) A person who has in his or her power, possession or procurement any books, records or other documents referred to in subsection (2) shall—

(*a*) produce them at the request of an authorised officer and permit the authorised officer to inspect and take copies of, or extracts from, them,

(*b*) at the request of an authorised officer, give any information which may be reasonably required with regard to them, and

(*c*) give such other assistance and information to an authorised officer as is reasonable in the circumstances.

(5) Where any person from whom production of a book, record or other document is required claims a lien thereon the production of it shall be without prejudice to the lien.

(6) The duty to produce or provide any information, document, material or explanation extends to an examiner, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of a person to whom this section applies, or who appears to the Minister, the Authority or the authorised officer to have the information, document, material or explanation in his or her possession or under his or her control.

(7) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Act.

(8) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this section held on any premises or any part of any premises, the judge may issue a warrant authorising an authorised officer, accompanied by other authorised officers or by a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter the premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this section.

(9) A person shall not—

(*a*) obstruct or impede an authorised officer in the exercise of a power under this section,

(*b*) give to an authorised officer information which the person knows is false or misleading, or

(*c*) without reasonable excuse, fail to comply with a request or requirement made by an authorised officer under this section.

(10) (*a*) If any officer, employee, shareholder or agent of a person to whom this section applies refuses to produce to an authorised officer when requested to do so any book or document which it is his or her duty under this section to produce, or refuses to cooperate with an authorised officer when required to do so, or refuses to answer any question put to him or her by an authorised officer with respect to the affairs of the person to whom this section applies, the authorised officer may certify the refusal under his or her hand to the High Court.

(*b*) Where a refusal is certified to the High Court, the High Court may enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, employee, shareholder or agent of the person to whom this section applies and any statement which may be offered in defence, make any order or direction as it thinks fit.

(*c*) An order or direction made under paragraph (*b*) may include a direction to the person concerned to attend or reattend before the authorised officer or produce particular books or documents or answer a particular question put to him or her by the authorised officer, or a direction that the person concerned need not produce a particular book or document or answer a particular question put to him or her by the authorised officer.

(11) A person shall not falsely represent himself or herself as an authorised officer.

(12) In this section—

'agent', in relation to a person to whom this section applies, includes past as well as present agents, and includes its bankers, accountants, solicitors, auditors and its financial and other advisers, whether or not those persons are officers or persons to whom this section applies;

'person to whom this section applies' means an undertaking referred to in subsection (1).

Privileged legal material.

18G.—(1) Subject to subsection (2), nothing in this Part shall compel the disclosure by any person

of privileged legal material or authorise the taking of privileged legal material.

(2) The disclosure of information may be compelled, or possession of it taken, pursuant to the powers of this Part, notwithstanding that it is apprehended that the information is privileged legal material provided the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the court of the issue as to whether the information is privileged legal material.

(3) Without prejudice to subsection (4), where, in the circumstances referred to in subsection (2), information has been disclosed or taken possession of pursuant to the powers in this Part, the person—

(*a*) to whom such information has been so disclosed, and

(*b*) who has taken possession of it,

shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under subsection (4) in relation to the matter concerned) apply to the court for a determination as to whether the information is privileged legal material and an application under this subsection shall be made within 7 days after the disclosure or the taking of possession.

(4) A person who, in the circumstances referred to in subsection (2), is compelled to disclose information, or from whose possession information is taken, pursuant to the powers in this Part, may apply to the court for a determination as to whether the information is privileged legal material.

(5) Pending the making of a final determination of an application under subsection (3) or (4), the court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

(*a*) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,

(*b*) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be

determined between the parties concerned, that the court considers to be appropriate for the purpose of—

(i) examining the information, and

(ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(6) An application under subsection (3), (4) or (5) shall be by motion and may, if the court directs, be heard otherwise than in public.

(7) In this section—

'court' means the High Court;

'information' means information contained in a document, a computer (including a personal organiser or any other electronic means of information storage or retrieval) or otherwise;

'privileged legal material' means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.".

Amendment of section 21 of Principal Act.

18.—Section 21 of the Principal Act is amended, in subsection (1)—

(*a*) by substituting "sections 4(6), 7AC, 7D, 7E, 7F, 7G, 14, 15, 17 and 18 and Parts IIIA and IIIB" for "sections 7AC, 7D, 7E, 7F, 7G, 12, 14, 15, 17 and 18 and Part IIIA", and

(*b*) by substituting the following paragraph for paragraph (*a*):

"(*a*) to manage and administer the Risk Equalisation Scheme,".

Amendment of section 32 of Principal Act.

19.—Section 32 of the Principal Act is amended, in subsection (1), by substituting "the Risk Equalisation Scheme" for "a scheme".

Repeals.

20.—Sections—

(*a*) 12,

(*b*) 12A,

and

(*c*) 33A,

of the Principal Act are repealed.

Substitution of Schedule 2 to Principal Act.

21.—The Principal Act (as amended by the Health Insurance (Miscellaneous Provisions) Act 2009), is amended by substituting the following Schedules for Schedule 2:

Section 6A.

"SCHEDULE 2

EUROPEAN UNION FRAMEWORK FOR STATE AID IN THE FORM OF PUBLIC SERVICE COMPENSATION (2011) (2012/C8/03)

(Text with EEA relevance)

2012/C 8/03

1. PURPOSE AND SCOPE

1. For certain services of general economic interest (SGEIs) to operate on the basis of principles and under conditions that enable them to fulfil their missions, financial support from the public authorities may prove necessary where revenues accruing from the provision of the service do not allow the costs resulting from the public service obligation to be covered.

2. It follows from the case-law of the Court of Justice of the European Union [1] that public service compensation does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union if it fulfils a certain number of conditions [2]. Where those conditions are met, Article 108 of the Treaty does not apply.

3. Where public service compensation does not meet those conditions, and to the extent the general criteria for the applicability of Article 107(1) of the Treaty are satisfied, such compensation constitutes State aid and is subject to Articles 106, 107 and 108 of the Treaty.

4. In its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest [3], the Commission has clarified the conditions under which public service compensation is to be regarded as State aid. Furthermore, in its Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest [4], the Commission will set out the conditions under which small amounts of public service compensation should be deemed not to affect trade between Member States and/or not to distort or threaten to distort competition. In those circumstances, compensation is not caught by Article 107(1) of the Treaty and consequently does not fall under the notification procedure provided for in Article 108(3) of the Treaty.

5. Article 106(2) of the Treaty provides the legal basis for assessing the compatibility of State aid for SGEIs. It states that undertakings entrusted with the operation of SGEIs or having the character of a revenue-producing monopoly are subject to the rules contained in the Treaty, in particular to the rules on competition. However, Article 106(2) of the Treaty provides for an exception from the rules contained in the Treaty insofar as the application of the competition rules would obstruct, in law or in fact, the performance of the tasks assigned. This exception only applies where the development of trade is not affected to such an extent as would be contrary to the interests of the Union.

6. Commission Decision 2012/21/EU [5] on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest [6] lays down the conditions under which certain types of public service compensation are to be regarded as compatible with the internal market pursuant to Article 106(2) of the Treaty and exempt from the requirement of prior notification under Article 108(3) of the Treaty.

7. The principles set out in this Communication apply to public service compensation only in so far as it constitutes State aid not covered by Decision 2012/21/EU. Such compensation is subject to the prior notification requirement under Article 108(3) of the Treaty. This Communication spells out the conditions under which such State aid can be found compatible with the internal market pursuant to Article 106(2) of the Treaty. It replaces the Community framework for State aid in the form of public service compensation [7].

8. The principles set out in this Communication apply to public service compensation in the field of air and maritime transport, without prejudice to stricter specific provisions contained in sectoral Union legislation. They apply neither to the land transport sector, nor to the public service broadcasting sector, which is covered by the Communication from the Commission on the application of State aid rules to public service broadcasting [8].

9. Aid for providers of SGEIs in difficulty will be assessed under the Community guidelines on State aid for rescuing and restructuring firms in difficulty [9].

10. The principles set out in this Communication apply without prejudice to:

(*a*) requirements imposed by Union law in the field of competition (in particular Articles 101 and 102 of the Treaty);

(*b*) requirements imposed by Union law in the field of public procurement;

(*c*) the provisions of the Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings [10];

(*d*) additional requirements flowing from the Treaty or from sectoral Union legislation.

2. CONDITIONS GOVERNING THE COMPATIBILITY OF PUBLIC SERVICE COMPENSATION THAT CONSTITUTES STATE AID

2.1. General provisions

11. At the current stage of development of the internal market, State aid falling outside the scope of Decision 2012/21/EU may be declared compatible with Article 106(2) of the Treaty if it is necessary for the operation of the service of general economic interest concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union. The conditions set out in sections 2.2 to 2.10 must be met in order to achieve that balance.

2.2. Genuine service of general economic interest as referred to in Article 106 of the Treaty

12. The aid must be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) of the Treaty.

13. In its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, the Commission has provided guidance on the requirements concerning the definition of a service of general economic interest. In particular, Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions. As for the question of whether a service can be provided by the market, the Commission's assessment is limited to checking whether the Member State's definition is vitiated by a manifest error, unless provisions of Union law provide a stricter standard.

14. For the scope of application of the principles set out in this Communication, Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate

instruments to take the interests of users and providers into account. This does not apply where it is clear that a new consultation will not bring any significant added value to a recent consultation.

2.3. Need for an entrustment act specifying the public service obligations and the methods of calculating compensation

15. Responsibility for the operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. The term "Member State" covers the central, regional and local authorities.

16. The act or acts must include, in particular:

(*a*) the content and duration of the public service obligations;

(*b*) the undertaking and, where applicable, the territory concerned;

(*c*) the nature of any exclusive or special rights assigned to the undertaking by the granting authority;

(*d*) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and

(*e*) the arrangements for avoiding and recovering any overcompensation.

2.4. Duration of the period of entrustment

17. The duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.

2.5. Compliance with the Directive 2006/111/EC

18. Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC [11]. Aid that does not comply with that Directive is considered to affect the development of trade to an extent that would be contrary to the interest of the Union within the meaning of Article 106(2) of the Treaty.

2.6. Compliance with Union public procurement rules

19. Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority,

when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty.

2.7. Absence of discrimination

20. Where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.

2.8. Amount of compensation

21. The amount of compensation must not exceed what is necessary to cover the net cost [12] of discharging the public service obligations, including a reasonable profit.

22. The amount of compensation can be established on the basis of either the expected costs and revenues, or the costs and revenues actually incurred, or a combination of the two, depending on the efficiency incentives that the Member State wishes to provide from the outset, in accordance with paragraphs 40 and 41.

23. Where the compensation is based, in whole or in part, on expected costs and revenues, they must be specified in the entrustment act. They must be based on plausible and observable parameters concerning the economic environment in which the SGEI is being provided. They must rely, where appropriate, on the expertise of sector regulators or of other entities independent from the undertaking. Member States must indicate the sources on which these expectations are based [13]. The cost estimation must reflect the expectations of efficiency gains achieved by the SGEI provider over the lifetime of the entrustment.

Net cost necessary to discharge the public service obligations

24. The net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible.

Net avoided cost methodology

25. Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to

discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation. Due attention must be given to correctly assessing the costs that the service provider is expected to avoid and the revenues it is expected not to receive, in the absence of the public service obligation. The net cost calculation should assess the benefits, including intangible benefits as far as possible, to the SGEI provider.

26. Annex IV to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services [14], and Annex I to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service [15], contain more detailed guidance on how to apply the net avoided cost methodology.

27. Although the Commission regards the net avoided cost methodology as the most accurate method for determining the cost of a public service obligation, there may be cases where the use of that methodology is not feasible or appropriate. In such cases, where duly justified, the Commission can accept alternative methods for calculating the net cost necessary to discharge the public service obligations, such as the methodology based on cost allocation.

Methodology based on cost allocation

28. Under the cost allocation methodology, the net cost necessary to discharge the public service obligations can be calculated as the difference between the costs and the revenues for a designated provider of fulfilling the public service obligations, as specified and estimated in the entrustment act.

29. The costs to be taken into consideration include all the costs necessary to operate the SGEI.

30. Where the activities of the undertaking in question are confined to the SGEI, all its costs may be taken into consideration.

31. Where the undertaking also carries out activities falling outside the scope of the SGEI, the costs to be taken into consideration may cover all the direct costs necessary to discharge the public service obligations and an appropriate contribution to the indirect costs common to both the SGEI and other activities. The costs linked to any activities outside the scope of the SGEI must

include all the direct costs and an appropriate contribution to the common costs. To determine the appropriate contribution to the common costs, market prices for the use of the resources, where available, can be taken as a benchmark [16]. In the absence of such market prices, the appropriate contribution to the common costs can be determined by reference to the level of reasonable profit [17] the undertaking is expected to make on the activities falling outside the scope of the SGEI or by other methodologies where more appropriate.

Revenue

32. The revenue to be taken into account must include at least the entire revenue earned from the SGEI, as specified in the entrustment act, and the excessive profits generated from special or exclusive rights even if linked to other activities as provided in paragraph 45, regardless of whether those excessive profits are classified as State aid within the meaning of Article 107(1) of the Treaty.

Reasonable profit

33. Reasonable profit should be taken to mean the rate of return on capital [18] that would be required by a typical company considering whether or not to provide the service of general economic interest for the whole duration of the entrustment act, taking into account the level of risk. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation mechanism.

34. Where duly justified, profit level indicators other than the rate of return on capital can be used to determine what the reasonable profit should be, such as the average return on equity [19] over the entrustment period, the return on capital employed, the return on assets or the return on sales.

35. Whatever indicator is chosen, the Member State must provide the Commission with evidence that the projected profit does not exceed what would be required by a typical company considering whether or not to provide the service, for instance by providing references to returns achieved on similar types of contracts awarded under competitive conditions.

36. A rate of return on capital that does not exceed the relevant swap rate [20] plus a premium of 100 basis points [21] is regarded as reasonable in any event. The relevant swap rate is the swap rate whose maturity and currency correspond to the duration and currency of the entrustment act.

37. Where the provision of the SGEI is connected with a substantial commercial or contractual risk, for instance because the compensation takes the form of a fixed lump sum payment covering

expected net costs and a reasonable profit and the undertaking operates in a competitive environment, the reasonable profit may not exceed the level that corresponds to a rate of return on capital that is commensurate with the level of risk. That rate should be determined where possible by reference to the rate of return on capital that is achieved on similar types of public service contracts awarded under competitive conditions (for example, contracts awarded under a tender). Where it is not possible to apply that method, other methods for establishing a return on capital may also be used, upon justification [22].

38. Where the provision of the SGEI is not connected with a substantial commercial or contractual risk, for instance because the net cost incurred in providing the service of general economic interest is essentially compensated ex post in full, the reasonable profit may not exceed the level that corresponds to the level specified in paragraph 36. Such a compensation mechanism provides no efficiency incentives for the public service provider. Hence its use is strictly limited to cases where the Member State is able to justify that it is not feasible or appropriate to take into account productive efficiency and to have a contract design which gives incentives to achieve efficiency gains.

Efficiency incentives

39. In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.

40. Efficiency incentives can be designed in different ways to best suit the specificity of each case or sector. For instance, Member States can define upfront a fixed compensation level which anticipates and incorporates the efficiency gains that the undertaking can be expected to make over the lifetime of the entrustment act.

41. Alternatively, Member States can define productive efficiency targets in the entrustment act whereby the level of compensation is made dependent upon the extent to which the targets have been met. If the undertaking does not meet the objectives, the compensation should be reduced following a calculation method specified in the entrustment act. In contrast, if the undertaking exceeds the objectives, the compensation should be increased following a method specified in the entrustment act. Rewards linked to productive efficiency gains are to be set at a level such as to allow balanced sharing of those gains between the undertaking and the Member State and/or the users.

42. Any such mechanism for incentivising efficiency improvements must be based on objective and measurable criteria set out in the entrustment act and subject to transparent ex post assessment carried out by an entity independent from the SGEI provider.

43. Efficiency gains should be achieved without prejudice to the quality of the service provided and should meet the standards laid down in Union legislation.

Provisions applicable to undertakings also carrying out activities outside the scope of the SGEI or providing several SGEIs

44. Where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services in line with the principles set out in paragraph 31. Where an undertaking is entrusted with the operation of several SGEIs because the granting authority or the nature of the SGEI is different, the undertaking's internal accounts must make it possible to verify whether there has been any overcompensation at the level of each SGEI.

45. If the undertaking in question holds special or exclusive rights linked to activities, other than the SGEI for which aid is granted, that generate profits in excess of the reasonable profit, or benefits from other advantages granted by the State, these must be taken into consideration, irrespective of their classification for the purposes of Article 107(1) of the Treaty, and added to the undertaking's revenue. The reasonable profit on the activities for which the undertaking holds special or exclusive rights has to be assessed from an ex ante perspective, in the light of the risk, or the absence of risk, incurred by the undertaking in question. That assessment also has to take into account the efficiency incentives that the Member State has introduced in relation to the provision of the services in question.

46. The Member State may decide that the profits accruing from other activities outside the scope of the SGEI, in particular those activities which rely on the infrastructure necessary to provide the SGEI, must be allocated in whole or in part to the financing of the SGEI.

Overcompensation

47. Overcompensation should be understood as compensation that the undertaking receives in excess of the amount of aid as defined in paragraph 21 for the whole duration of the contract. As stated in paragraphs 39 to 42, a surplus that results from higher than expected efficiency gains may be retained by the undertaking as additional

reasonable profit as specified in the entrustment act [23].

48. Since overcompensation is not necessary for the operation of the SGEI, it constitutes incompatible State aid.

49. Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with this the requirements set out in this section. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years. For aid granted by means other than a public procurement procedure with publication [24], checks should normally be made at least every two years.

50. Where the Member State has defined upfront a fixed compensation level which adequately anticipates and incorporates the efficiency gains that the public service provider can be expected to make over the period of entrustment, on the basis of a correct allocation of costs and revenues and of reasonable expectations as described in this section, the overcompensation check is in principle confined to verifying that the level of profit to which the provider is entitled in accordance with the entrustment act is indeed reasonable from an ex ante perspective.

2.9. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

51. The requirements set out in sections 2.1 to 2.8 are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interests of the Union.

52. It is conceivable, however, that in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union.

53. In such a case, the Commission will examine whether such distortions can be mitigated by requiring conditions or requesting commitments from the Member State.

54. Serious competition distortions such as to be contrary to the interests of the Union are only expected to occur in exceptional circumstances. The Commission will restrict its attention to those distortions where the aid has significant adverse

effects on other Member States and the functioning of the internal market, for example, because they deny undertakings in important sectors of the economy the possibility to achieve the scale of operations necessary to operate efficiently.

55. Such distortions may arise, for instance, where the entrustment either has a duration which cannot be justified by reference to objective criteria (such as the need to amortise non-transferable fixed assets) or bundles a series of tasks (typically subject to separate entrustments with no loss of social benefit and no additional costs in terms of efficiency and effectiveness in the provision of the services). In such a case, the Commission would examine whether the same public service could equally well be provided in a less distortive manner, for instance by way of a more limited entrustment in terms of duration or scope or through separate entrustments.

56. Another situation in which a more detailed assessment may be necessary is where the Member State entrusts a public service provider, without a competitive selection procedure, with the task of providing an SGEI in a non-reserved market where very similar services are already being provided or can be expected to be provided in the near future in the absence of the SGEI. Those adverse effects on the development of trade may be more pronounced where the SGEI is to be offered at a tariff below the costs of any actual or potential provider, so as to cause market foreclosure. The Commission, while fully respecting the Member State's wide margin of discretion to define the SGEI, may therefore require amendments, for instance in the allocation of the aid, where it can reasonably show that it would be possible to provide the same SGEI at equivalent conditions for the users, in a less distortive manner and at lower cost for the State.

57. Closer scrutiny is also warranted where the entrustment of the service obligation is connected with special or exclusive rights that seriously restrict competition in the internal market to an extent contrary to the interest of the Union. While the primary route for apprehending such a case remains Article 106(1) of the Treaty, the State aid may not be deemed compatible where the exclusive right provides for advantages that could not be properly assessed, quantified or apprehended according to the methodologies to calculate the net costs of the SGEI described in section 2.8.

58. The Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets. Where this is the case, it may be appropriate to require that competitors are given

fair and non-discriminatory access to the infrastructure under appropriate conditions.

59. If distortions of competition are a consequence of the entrustment hindering effective implementation or enforcement of Union legislation aimed at safeguarding the proper functioning of the internal market, the Commission will examine whether the public service could equally well be provided in a less distortive manner, for instance by fully implementing the sectoral Union legislation.

2.10. Transparency

60. For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:

(*a*) the results of the public consultation or other appropriate instruments referred to in paragraph 14;

(*b*) the content and duration of the public service obligations;

(*c*) the undertaking and, where applicable, the territory concerned;

(*d*) the amounts of aid granted to the undertaking on a yearly basis.

2.11. Aid which meets the conditions laid down in Article 2(1) of Decision 2012/21/EU

61. The principles set out in paragraphs 14, 19, 20, 24, 39, 51 to 59 and 60(*a*) do not apply to aid which meets the conditions laid down in Article 2(1) of Decision 2012/21/EU.

3. REPORTING AND EVALUATION

62. Member States shall report to the Commission on the compliance with this Communication every two years. The reports must provide an overview of the application of this Communication to the different sectors of service providers, including:

(*a*) a description of the application of the principles set out in this Communication to the services falling within its scope, including in-house activities;

(*b*) the total amount of aid granted to undertakings falling within the scope of this Communication with a breakdown by the economic sector of the beneficiaries;

(*c*) an indication of whether, for a particular type of service, the application of the principles set out in this Communication has given rise to difficulties or complaints by third parties; and

(*d*) any other information concerning the application of the principles set out in this Communication required by the Commission and to be specified in due time before the report is to be submitted.

The first report shall be submitted by 30 June 2014.

63. In addition, in accordance with the requirements of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [25] (now Article 108 of the Treaty) and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [26], Member States must submit annual reports to the Commission on the aid granted following a decision of the Commission based on this Communication.

64. The reports will be published on the internet site of the Commission.

65. The Commission intends to carry out a review of this Communication by 31 January 2017.

4. CONDITIONS AND OBLIGATIONS ATTACHED TO COMMISSION DECISIONS

66. Pursuant to Article 7(4) of Regulation (EC) No 659/1999, the Commission may attach to a positive decision conditions subject to which aid may be considered compatible with the internal market, and lay down obligations to enable compliance with the decision to be monitored. In the field of SGEI, conditions and obligations may be necessary in particular to ensure that aid granted to the undertakings concerned does not lead to undue distortions of competition and trade in the internal market. In this context, periodic reports or other obligations may be necessary, in the light of the specific situation of each service of general economic interest.

5. APPLICATION

67. The Commission will apply the provisions of this Communication from 31 January 2012.

68. The Commission will apply the principles set out in this Communication to all aid projects notified to it and will take a decision on those projects in accordance with those principles, even if the projects were notified prior to 31 January 2012.

69. The Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date. However, where the aid was granted before 31

January 2012, the principles set out in paragraphs 14, 19, 20, 24, 39 and 60 do not apply.

6. APPROPRIATE MEASURES

70. The Commission proposes as appropriate measures for the purposes of Article 108(1) of the Treaty that Member States publish the list of existing aid schemes regarding public service compensation which have to be brought into line with this Communication by 31 January 2013, and that they bring those aid schemes into line with this Communication by 31 January 2014.

71. Member States should confirm to the Commission by 29 February 2012 that they agree to the appropriate measures proposed. In the absence of any reply, the Commission will take it that the Member State concerned does not agree.

[1] Judgments in Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH ("Altmark") [2003] ECR I-7747 and Joined Cases C-34/01 to C-38/01 Enirisorse SpA v Ministero delle Finanze [2003] ECR I-14243.

[2] In its judgment in Altmark, the Court of Justice held that public service compensation does not constitute State aid if four cumulative criteria are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the relevant means, would have incurred.

[3] See page 23 of this Official Journal.

[4] See page 4 of this Official Journal.

[5] OJ L 7, 11.1.2012, p. 3.

[6] OJ L 7, 11.1.2012.

[7] OJ C 297, 29.11.2005, p. 4.

[8] OJ C 257, 27.10.2009, p. 1.

[9] OJ C 244, 1.10.2004, p. 2.

[10] OJ L 318, 17.11.2006, p. 17.

[11] Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

[12] In this context, net cost means net cost as determined in paragraph 25 or costs minus revenues where the net avoided cost methodology cannot be applied.

[13] Public sources of information, cost levels incurred by the SGEI provider in the past, cost levels of competitors, business plans, industry reports, etc.

[14] OJ L 108, 24.4.2002, p. 51.

[15] OJ L 15, 21.1.1998, p. 14.

[16] In Chronopost (Joined Cases C-83/01 P, C-93/01 P and C-94/01 P Chronopost SA [2003] ECR I-6993), the European Court of Justice referred to "normal market conditions": "In the absence of any possibility of comparing the situation of La Poste with that of a private group of undertakings not operating in a reserved sector, "normal market conditions", which are necessarily hypothetical, must be assessed by reference to the objective and verifiable elements which are available".

[17] The reasonable profit will be assessed from an ex ante perspective (based on expected profits rather than on realised profits) in order not to remove the incentives for the undertaking to make efficiency gains when operating activities outside the SGEI.

[18] The rate of return on capital is defined here as the Internal Rate of Return (IRR) that the company makes on its invested capital over the lifetime of the project, that is to say the IRR on the cash flows of the contract.

[19] In any given year the accounting measure return on equity (ROE) is defined as the ratio between earnings before interests and taxes (EBIT) and equity capital in that year. The average annual return should be computed over the lifetime of the entrustment by applying as discount factor either the company's cost of capital or the rate set by the Commission Reference rate Communication, whatever more appropriate.

[20] The swap rate is the longer maturity equivalent to the Inter-Bank Offered Rate (IBOR rate). It is used in the financial markets as a benchmark rate for establishing the funding rate.

[21] The premium of 100 basis points serves, inter alia, to compensate for liquidity risk related to the fact that an SGEI provider that invests capital in an SGEI contract commits that capital for the duration of the entrustment act and will be unable to sell its stake as rapidly and at as low a cost as is the case with a widely held and liquid risk-free asset.

[22] For instance, by comparing the return with the weighted average cost of capital (WACC) of the company in relation to the activity in question, or with the average return on capital for the sector in recent years, taking into account whether historical data can be appropriate for forward-looking purposes.

[23] Similarly, a deficit which results from efficiency gains lower than expected should be partially borne by the undertaking when stipulated in the entrustment act.

[24] Such as aid granted in relation to in-house contracts, concessions with no competitive allocation, public procurement procedures with no prior publication.

[25] OJ L 83, 27.3.1999, p. 1.

[26] OJ L 140, 30.4.2004, p. 1.

SCHEDULE 3

AMOUNT SPECIFIED FOR PURPOSES OF DEFINITION OF 'HOSPITAL BED UTILISATION CREDIT'

SCHEDULE 4

AMOUNT OF PREMIUM TO BE PAID FROM FUND IN RESPECT OF CERTAIN CLASSES OF INSURED PERSON BASED ON AGE AND SEX OF INSURED PERSONS AND THEIR TYPE OF INSURANCE COVER ON DATE CONTRACT IS EFFECTED

TABLE

Class of Insured Person	Amount of premium to be paid from Fund
Male aged 50 years and over but less than 55 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 50 years and over but less than 55 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 50 years and over but less than 55 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 50 years and over but less than 55 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 55 years and over but less than 60 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 55 years and over but less than 60 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 55 years and over but less than 60 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 55 years and over but less than 60 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 60 years and over but less than 65 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	

Class of Insured Person	Amount of premium to be paid from Fund
Male aged 60 years and over but less than 65 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 60 years and over but less than 65 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 60 years and over but less than 65 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 65 years and over but less than 70 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 65 years and over but less than 70 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 65 years and over but less than 70 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 65 years and over but less than 70 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 70 years and over but less than 75 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 70 years and over but less than 75 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 70 years and over but less than 75 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 70 years and over but less than 75 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	

Class of Insured Person	Amount of premium to be paid from Fund
Male aged 75 years and over but less than 80 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 75 years and over but less than 80 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 75 years and over but less than 80 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 75 years and over but less than 80 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 80 years and over but less than 85 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 80 years and over but less than 85 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 80 years and over but less than 85 years on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Female aged 80 years and over but less than 85 years on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Male aged 85 years and over on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	
Male aged 85 years and over on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	
Female aged 85 years and over on the date the relevant contract (being a relevant contract (non-advanced cover)) is renewed or entered into, as the case may be	

Class of Insured Person	Amount of premium to be paid from Fund
Female aged 85 years and over on the date the relevant contract (being a relevant contract (advanced cover)) is renewed or entered into, as the case may be	

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22.—(1) This Act may be cited as the Health Insurance (Amendment) Act 2012. Short title, collective citation and construction.

(2) The Health Insurance Acts 1994 to 2011 and this Act may be cited together as the Health Insurance Acts 1994 to 2012 and shall be construed together as one.