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Bill Digest

Health Insurance (Amendment) Bill 2022

Bill No. 109 of 2022

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Abstract

The *Health Insurance (Amendment) Bill 2022* seeks to amend the *Health Insurance Act 1994* to specify the amount of premium to be paid from the Risk Equalisation Fund from 1 April 2023 for certain classes of insured persons, while also making make a consequential amendment to section 125A of the *Stamp Duties Consolidation Act 1999*. The Bill also makes further provision in relation to the appointment and powers of authorised officers, and for an expiration date for the act of entrustment underpinning the Risk Equalisation Scheme.

Tithe an Oireachtais
Houses of the Oireachtas

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Summary and key messages

The Health Insurance (Amendment) Bill 2022 (the Bill) was published on 24 November 2022. It is the latest in a series of annual bills which seek to amend the Risk Equalisation Scheme (RES) that underpins the Irish private health insurance market. These bills do this by amending the relevant provisions of the *Health Insurance Act 1994* (the Principal Act), in order to specify the amount of premium to be paid from the Risk Equalisation Fund (REF) with regard to specific classes of insured persons, and the rate of stamp duty to be paid from health insurance contracts into the Risk Equalisation Fund (REF).

The Bill provides for an expiry date for the act of entrustment for the Risk Equalisation Scheme and defines the act of entrustment as Part II of the Principal Act and section 125A of the *Stamp Duties Consolidation Act 1999*.

The Bill seeks to amend section 11C of, and Schedule 4 to, the Principal Act to revise the amounts of premiums to be paid from the REF. It also proposes to make consequential amendments to section 125A of the *Stamp Duties Consolidation Act 1999*, which in turn revise the rates of stamp duties from health insurance contracts paid into the REF. Section 125A was inserted by section 26 of the *Health Insurance (Miscellaneous Provisions) Act 2009* and most recently amended by section 8 of the *Health Insurance (Amendment) Act 2021*.

The Bill also revises the rules regarding firstly, who may be appointed as an authorised officer of the Health Insurance Authority (HIA), and secondly, the powers of authorised officers under the Principal Act. The relevant provisions being amended, sections 18E and 18F, were originally inserted into the Principal Act by the *Health Insurance (Amendment) Act 2012*.

The Explanatory Memorandum to the Bill emphasises that the RES is Exchequer neutral. This means that it does not draw from, or contribute funds to, the Exchequer. Further, any surplus or deficit arising from the RES in any particular year is taken into account when calculating the relevant rates for the following year. The rates themselves are calculated and recommended to the Minister by the HIA.

Glossary of Terms and Abbreviations

Term / Abbreviation	Meaning
Act of Entrustment	In the context of the *Health Insurance Act 1994* (Principal Act), this is the legislative instrument that underpins the operation of the RES. Section 6B of the Principal Act, which is proposed to be inserted by Section 2 of the Bill, provides that the act of entrustment is Part II of the Principal Act and section 125A of the *Stamp Duties Consolidation Act 1999*.
Non-advanced health insurance policy	**Non-advanced policies**: Broadly speaking, these policies provide a lower level of cover than advanced policies. In general they provide cover mainly for public hospitals. ***More specifically:*** Non-advanced cover is defined as a relevant contract which provides health insurance cover for: Not more than 66 per cent of the full cost for hospital charges in a private hospital, or Not more than the prescribed minimum payments within the meaning of the *Health Insurance Act 1994 (Minimum Benefit) Regulations 1996 (S.I. No. 83 of 1996)*, whichever of the two is the greater.
Advanced health insurance policy	Advanced policies are all other policies – generally those that provide cover for care in private hospitals.
ARHC	Age-Related Health Credit
Community Rating	Community rating means that the level of risk that a particular consumer poses to an insurer does not directly affect the premium they pay. Everyone pays the same for the same cover – regardless of age, gender or health status. The system is built on inter-generational solidarity – with the premiums paid by younger people subsidising those paid by older people. Older consumers who have long held health insurance will themselves have subsidised the generation(s) before them. Ireland's system of community rating is now adjusted by 'Lifetime Community Rating' (see below) which applies different rules for 'late' entry and discounts for young adults.
HIA	Health Insurance Authority
HCCP	High Cost Claims Pool
HUC	Hospital Utilisation Credit
Minister	Minister for Health
OJ	Official Journal of the European Union
Principal Act	*Health Insurance Act 1994*
Risk Equalisation Fund (REF)	Administered by the Health Insurance Authority, the Fund is the pool of money that pays out the Risk equalisation credits / Hospital utilisation credit (HUC). Monies come into the Fund from the Revenue Commissioners through Stamp Duties levied on all open market health insurance policies provided by insurers. The Revenue Commissioners, in turn, pay the monies to the Health Insurance Authority (to the Risk Equalisation Fund). The Health Insurance Authority pays out monies to health insurers by way of two credits – Risk equalisation credits and Hospital utilisation credit (detailed below).
Register	Register of Health Benefits Undertakings established under section 14 of the Principal Act.
Risk Equalisation Scheme / System (RES)	The aim of the risk equalisation system is to fairly distribute the costs that arise for insurers as a result of the differing health status of all their customers. Risk equalisation aims to make health insurance more affordable for older people. It also aims to support competition within the market.

Background and Policy Context

Explaining risk equalisation

Risk equalisation is the system that seeks to spread insurance risks across insurers based on their relative exposure to customers at higher risk of making claims. It underpins the principle of 'community rating' – whereby all customers, regardless of their age or health status are charged the same price for a health insurance policy.[1]

The Risk Equalisation Scheme raises revenue from stamp duty – this is levied on every health insurance policy purchased in the State. The stamp duty is paid into a 'Risk Equalisation Fund' (managed by the Health Insurance Authority (HIA)). At present, risks are equalised by the payment to insurers of three different credits, as follows:

- The first, the **'Risk Equalisation Credit'** is paid prospectively (ahead of time) based on the age, gender and level of insurance cover of an insurer's customers.
- The second is a **'hospital utilisation credit'** paid retrospectively (after claims have been settled) based on hospital stays and day case attendance.
- The third is **'high cost claims credit'** which was introduced in 2022. This is also paid retrospectively. This is used as a further proxy (indicator) of health status and targets risk equalisation credits towards insurance companies with customers with more complex needs.

Due to the historical position of the Voluntary Health Insurance (VHI) organisation in the health insurance market, and the older age profile of its customers, VHI Healthcare is the net beneficiary of the Risk Equalisation Scheme. As noted above, the Scheme is Exchequer-neutral, i.e. it is neither a cost nor a benefit to the State.

In finer detail - How the Risk Equalisation Scheme works

The information in Text Box 1 below describes in detail the operation of the Risk Equalisation Scheme (RES).

Box 1: How the Risk Equalisation Scheme operates (see Glossary at page 4 for definitions)

The *Health Insurance (Amendment) Act 2012* provided for the Risk Equalisation Scheme (RES) from 1 January 2013. The scheme applies to open-membership health insurance providers only and not to restricted membership providers. The scheme takes account of sex, health status and type of cover as well as age.

The scheme involves a transfer of credits to health insurance providers in respect of older and less healthy customers and a stamp duty levied on health insurance providers in order to pay for these credits. The *Health Insurance (Amendment) Act 2012* sought to establish a permanent fund from which risk equalisation credits are payable. The health insurance companies pay stamp duty

[1] This 'community rating' principle is limited by a late-entry loading, known as 'lifetime community rating' which means that people taking out health insurance for the first time later in life pay a higher premium for a period of up to ten years. This applies to people aged 35 and over. See: https://www.hia.ie/sites/default/files/07.18%20HIA_LCR_FINAL_WEB_0.pdf; In addition, discounts may be applied for younger adults (aged 18 to 25 years) and child rates cannot be more than 50% of adult rates.

on individual policies to the Revenue Commissioners, who then transfer the proceeds of the stamp duty to the fund. The fund is administered by the **Health Insurance Authority (HIA)**.

There are four rates of stamp duty. The rate that applies to each policy depends on whether the policy provides for advanced cover or non-advanced cover and whether the insured life is that of a child or an adult. The HIA can make regulations for the categorisation of health insurance products into advanced and non-advanced cover.

Risk Equalisation (RE) Credits are currently paid out to the health insurance companies in respect of the premiums of people aged 65 and over. The amount of the credit depends on the person's age, sex and the type of insurance cover (current and proposed rates are set out in the **Principal Provisions** section below).

Health status is also taken into account in two ways. A **Hospital Utilisation Credit (HUC)** is awarded based on each visit to hospital by an insured person. In effect, a hospital visit is used as an indicator of a policy holder's health status. The greater the number of hospital visits and the longer the stay in hospital, the sicker an insured person is deemed to be (for the purpose of HUC) and as a result, the greater the number of credits their insurer receives. At present, this credit is set at €125 for each overnight stay and €75 for each day case visit for insured people of all ages.

There is also a **High Cost Claims Pool (HCCP)** (new in 2022) which pays out a credit which is a proportion of high cost claims. These arise where an insured person is extremely ill and attends hospital for an extended period. At present it pays 40% quota share of claims over €50,000.

Each health insurance provider claims the credits from the HIA. They receive a greater amount in respect of policy holders who are older and less healthy.

The levels of credits and the stamp duty payable are reassessed annually.

Each year, the HIA makes recommendations to the Minister for Health on annual RE credit rates and on the corresponding stamp duty required to fund them under RES. The Minister for Health takes this into consideration when proposing rates for RE credits and recommends the corresponding stamp duty levy to the Minister for Finance.

Source: Adapted and updated from Citizens Information Board (2013) Relate, March 2013. Available at: http://www.citizensinformationboard.ie/publications/relate/relate_2013_03.pdf; And using Health Insurance Authority (2022) Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits.

Private Health Insurance Market

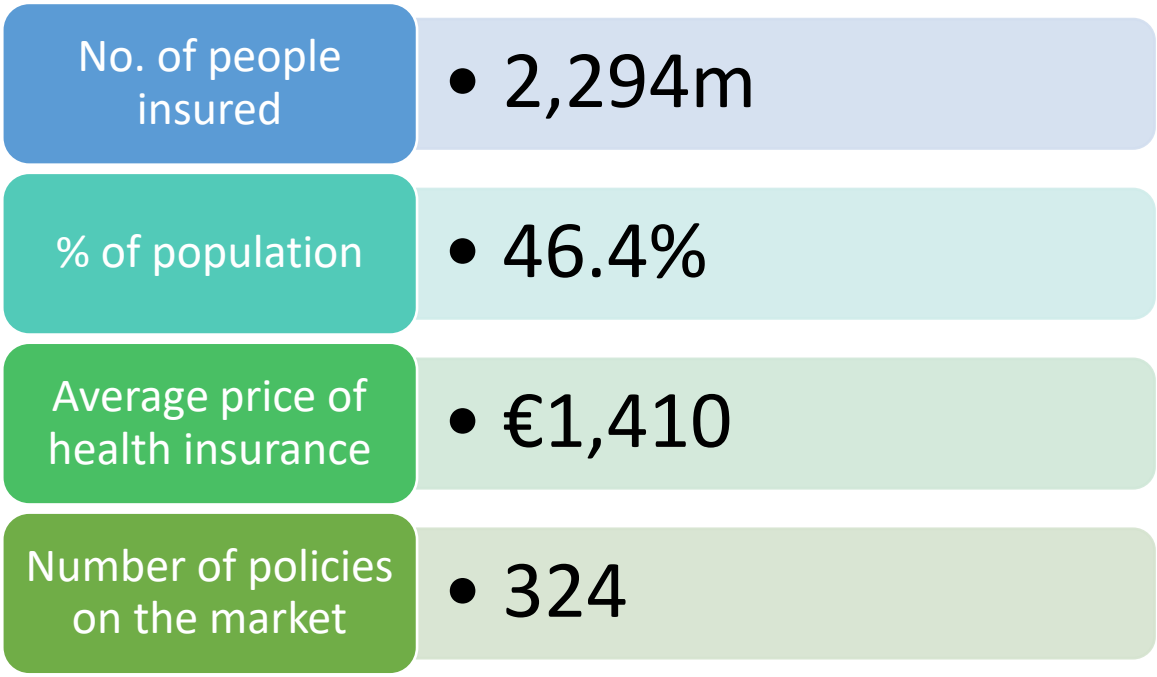
This section presents key data on the health insurance market and the market shares of the various providers.

Data

The health insurance market is the largest non-life insurance market in Ireland. In 2021 premiums paid for health insurance totalled €2.97bn.[2] The number of people with health insurance is growing. At the start of July 2022, almost 2.3 million people (46.4% of the population) had health insurance, this is 67,603 more than a year earlier. In the last four years, the market has been growing at an average rate of 2.5%.[3] On 1 July 2022 there were 324 health insurance policies on the market.

The Figure below sets out some key data on the market.

Figure 1: Key data on the health insurance market, 1 July 2022



Source: L&RS using data from Health Insurance Authority (2022) Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits.

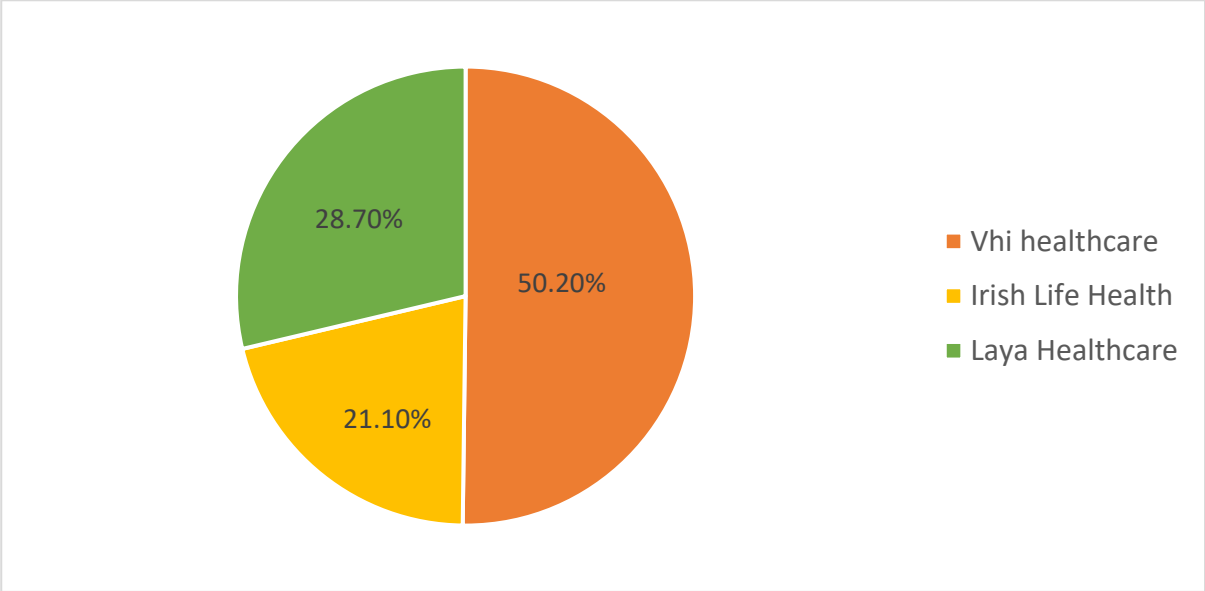
Market shares

[2] Health Insurance Authority (2022) *Annual Report 2021*. p.12.

[3] Health Insurance Authority (2022) Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits.

There are three open market private health insurance companies in operation at present.[4] The Figure below shows that Vhi Healthcare remains the dominant provider of health insurance – with half the market (50.2%). Laya Healthcare is the next largest player, with 29%, followed by Irish Life Health with 21% of the market. As noted above, VHI Healthcare is the net beneficiary of the risk equalisation scheme.[5]

Figure 2: Irish health insurance market shares, July 2022 (open market providers only)



Source: L&RS using data from Health Insurance Authority (2022) Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits.

[4] In addition to these open market providers, there are a small number of 'Restricted Membership Undertakings' – in the main, these are vocational schemes that are open only to employees of particular organisations (e.g. prison officers, ESB). These are not affected by the Risk Equalisation Scheme.

[5] HIA (2022) as before.

Principal provisions of the Bill

The Health Insurance (Amendment) Bill 2022 was published on 24 November 2022. According to the long title, the purpose of the Bill is to amend the *Health Insurance Act 1994* in respect of certain classes of insured persons from 1 April 2023, and to make certain other amendments to the Act, including:

- Making further provision for the appointment and powers of authorised officers,
- To make a consequential amendment to the *Stamp Duties Consolidation Act 1999*, and
- To provide for related matters.

The Bill itself consists of eight sections and is 14 pages long in total. Table 1 below summarises the provisions of the Bill.

Table 1: Summary of provisions

Section	Effect	Effect
1	Definition	This defines what is meant by 'Principal Act'.
2	Duration of entrustment act	This provides for an expiration date for the act of entrustment to be set for 31 March 2027.
3	Amendment of section 11C of Principal Act	This changes the application date for the new rates under the RES from '1 April 2022' to '1 April 2023'.
4	Amendment of section 18E of Principal Act	This amends current provisions relating to the appointment of authorised officers of the HIA.
5	Amendment of section 18F of Principal Act	This amends current provisions relating to the powers of authorised officers of the HIA.
6	Amendment of Schedule 4 to Principal Act	This provides for revised rates for Risk Equalisation Credits that will apply from 1 April 2023.
7	Amendment of section 125A of Stamp Duties Consolidation Act 1999	This applies to revised rates for stamp duties from health insurance contracts to apply from 1 January 2023.
8	Short title, commencement, collective citation and construction	This is a standard provision.

Source: Health Insurance (Amendment) Bill 2022

Section 1 is a standard provision that defines the Principal Act as the *Health Insurance Act 1994*.

Section 3 is a further amendment which follows previous Health Insurance (Amendment) Bills. It amends section 11C, which itself was inserted by section 15 of the *Health Insurance (Amendment) Act 2012*. The amendment provides for 1 April 2023 as the effective date for the revised credits payable from the Risk Equalisation Fund.

Section 8 is a standard provision that provides for the coming into operation of the Act on certain dates and the collective citation of the Health Insurance Acts (excluding section 7 as it relates to different legislation to the Principal Act). The Act is due to come into operation on 1 January 2023, with the exception of sections 2, 3 and 6, which come into operation on 1 April 2023.

This section, the Principal Provisions of the Bill, will focus on the following:

- Sections 2, 4, 5 and 6: Amendments of the Principal Act, and
- Section 7: Amendment of the *Stamp Duties Consolidation Act 1999*.

Financial Implications

On publishing the Bill, the Government press release stated the following in relation to how the RES operates with regard to the Exchequer:

> "The stamp duties collected on health insurance contracts *do not go to the Exchequer*. They are collected into the Risk Equalisation Fund and redistributed in the form of credits to health insurers, to compensate for the additional cost of insuring older and less healthy people." <emphasis added>[6]

According to the Explanatory Memorandum of the Bill, the RES is designed to be Exchequer neutral, with the stamp duty levy calculated to offset the costs associated with the provision of risk equalisation credits (age-related health credits, high cost claim credits and hospital utilisation credits).[7] The Explanatory Memorandum also clarifies that any surpluses or deficits arising from the RES are rolled over to the following year and taken into account when calculating revised risk equalisation credits and stamp duty levies.[8] The Bill itself makes amendments regarding age-related health credits (ARHCs) which are defined by section 11C and Schedule 4 of the Principal Act.

Section 2: Duration of entrustment act

Section 2 of the Bill relates to the setting of an expiration date for the act of entrustment, which is the legislative instrument that underpins the operation of the RES. The setting of an end date was requested by the European Commission as part of its approval of the RES. This end date is to be set as 31 March 2027. For the purposes of the RES, the entrustment act is Part II of the *Health Insurance Act 1994* (as amended) and section 125A of the *Stamp Duties Consolidation Act 1999*.

Article 106(2) of the Treaty on the Functioning of the European Union provides for an exception to the applicability of competition rules insofar as the application of the competition rules would obstruct, in law or in fact, the performance of the tasks assigned.[9] The conditions where certain types of public service compensation are to be considered compatible with the internal market are set out in the SGEI Framework.[10]

Under EU state aid rules, certain services of general economic interest (SGEIs) may be permitted with approval from the European Commission, which in the case of the RES is required. The RES operates as a compensation scheme for private insurers for the provision of private health insurance to customers who have a higher risk profile than the market average.[11] Its aim is to

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[6] Irish Government News Service, Minister Donnelly welcomes approval to publish the Health Insurance (Amendment) Bill 2022 (press release), 24 November 2022.

[7] Explanatory Memorandum to the Health Insurance (Amendment) Bill 2022, p.1.

[8] Ibid.

[9] See Article 106(2) TFEU and Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011) (2012/C 8/03) [2012] OJ C 8/15, at para. 5.

[10] Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011) (2012/C 8/03) [2012] OJ C 8/15.

[11] See European Commission Representation in Ireland, State aid: Commission approves prolongation and modification of Irish risk equalisation scheme (news article), 31 March 2022.

ensure that customers can access health insurance with no differentiation made between them based on certain characteristics, such as health risk status, age or sex.[12] The European Commission published its authorisation of the State Aid in the Official Journal of the European Union on 13 May 2022, which the date of the Commission's decision stated as 31 March 2022.[13]

Section 2 gives effect to the application of the end date for the entrustment act by inserting a new section 6B into the Principal Act. It provides for three main requirements:

- Subsection (1) provides that the entrustment act shall endure until the relevant date (defined in the section as 31 March 2027) after which it will cease to be in force,
- Subsection (2) provides that the Minister for Health may, after consulting the European Commission and the Minister for Finance, and having regard whether there is a need to continue the RES and a period for which it needs to continue, make an order specifying a later date as the relevant date, and
- Subsection (3) required that an order made under subsection (2) must be laid before the Houses of the Oireachtas as soon as possible after it is made. Such an order may be annulled by either House within the next 21 sitting days.

The section also defines what is meant by 'entrustment act' and 'relevant date'.

Sections 4 and 5: Authorised Officers

Under section 17 of the *Health Insurance (Amendment) Act 2012*, the Principal Act was amended by the insertion of Part IIIB into the Principal Act. This consisted of three new sections:

- Section 18E, which relates to the appointment of authorised officers of the HIA,
- Section 18F, which provides for the powers of authorised officers, and
- Section 18G, which sets out protections for privileged legal material.

Sections 4 and 5 of the Bill propose to respectively amend Sections 18E and 18F of the Principal Act, as inserted by the 2012 Act.

Section 4 of the Bill: Amendments to section 18E of the Principal Act

Section 4 proposes the following amendments to section 18E.

Section 18E(1) is proposed to be amended to provide that where in the opinion of the HIA it is necessary to do so for the purposes of section 18F(1)(a) [as inserted by the Bill], the HIA may appoint two specific categories of persons to be authorised officers:

- Any of its officers or employees, or
- Consultants or advisers engaged under section 23 [of the Principal Act] who, in the opinion of the HIA, have suitable qualifications and experience to satisfactorily exercise the powers of authorised officers by or under the Principal Act.

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[12] Ibid.

[13] Authorisation for State aid pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union – Cases where the Commission raises no objections [2022] OJ C 196/1 at pp.2-3.

Currently, section 18E(1) provides that the HIA "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". This would mean that the Bill proposes to limit the persons who may be appointed as authorised officers under the Principal Act.

Section 18E(2) is proposed to be amended by adding an additional requirement for authorised officers, when requested to produce their warrant of appointment, to produce a form of personal identification also.

Section 18E(3) sets out the circumstances where a person's appointment as an authorised officer may cease as follows:

- The revocation of the appointment by the HIA,
- If the appointment was for a fixed period, the expiration of that period, or
- If the person appointed ceases to be an employee or agent of the HIA.

The Bill proposes to amend the above circumstances to reflect the limitations on who may be appointed an authorised officer set out in the proposed section 18E(1). In particular, the third circumstance is proposed to be amended to provide that a person ceases to be an authorised officer if they cease to be an officer / employee of the HIA, or a consultant / adviser appointed under section 23 of the Principal Act, as the case may be.

The Bill further provides for a section 18E(4), which provides for a requirement for an authorised officer to report on the exercise of their powers as soon as practicable after being requested to do so by the HIA. Section 18E(5) is a saving provision which deems persons appointed as authorised officers before section 4 of the Bill comes into operation to be authorised officers under the same terms and conditions as before.

Section 5: Amendments to section 18F of the Principal Act

Section 5 of the Bill makes several amendments to section 18F of the Bill, which relates to the powers of authorised officers. As noted above, this provision was inserted by section 17 of the *Health Insurance (Amendment) Act 2012*. According to the Explanatory Memorandum, section 5 extends the enforcement powers of authorised officers of the HIA to apply to non-registered undertakings purporting to be carrying on health insurance business in Ireland.[14]

The section proposes to replace section 18F(1). It modifies the existing subsection 18F(1) as paragraph (a) of subsection (1), extending its application from registered undertakings to "any person". It also adds new paragraphs (b) and (c) to subsection (1).

Paragraph (b) lists the categories of individual to which section 18F applies across 10 subparagraphs:

i. A registered undertaking
ii. A former registered undertaking
iii. A person who has applied for registration in the Register

[14] Explanatory Memorandum to the Health Insurance (Amendment) Bill 2022, p.2.

iv. A person whom the HIA or authorised officer reasonably believes is or has been acting as, or claiming or holding itself out to be, a registered undertaking
v. A person who is or has been, or whom the HIA or authorised officer reasonably believes is or has been, without being registered in the Register, effecting or offering to effect, health insurance contracts in respect of which the person is required to be a registered undertaking.
vi. A related undertaking to any of the persons referred to in (i) to (v)
vii. A person whom the HIA or an authorised officer reasonably believes may possess or have control of information about a health insurance contract
viii. Any other person whom the HIA or an authorised officer reasonably believes may possess information about a person referred to in (i) to (viii)
ix. A person who is, in relation to a person referred to in (i) to (viii), a person specified in paragraph (c)
x. A person who is or has been an officer, employee or agent of a person referred to in (i) to (ix) or is, in relation to a person who is or has been such an officer, employee or agent, a person specified in paragraph (c).

Paragraph (c) stipulates the person referred to in subparagraphs (ix) and (x) of paragraph (b) is:

- An administrator within the meaning of section 1(1) of the *Insurance (No.2) Act 1983*. This refers to administrators appointed by the High Court under sections 2(2) or 2(4) of that Act, as amended.[15] The function of the administrator under the Act is to take over management of an insurer for the purposes of running its business as a going concern with a view to placing it on a sound commercial and financial footing.
- An examiner, liquidator, receiver or official assignee. This refers to situations where a company is insolvent and is wound up by a liquidator or receiver, or the company seeks court protection through examinership. The official assignee is involved where the company enters bankruptcy proceedings.
- A person with functions corresponding to those of any of the persons referred to in paragraph (c) under the law of other jurisdictions.

Section 5 amends subsection (2) of section 18F, by deleting "or any person employed by such person" from paragraphs (c) and (e) of that subsection. The existing section 18F(2)(c) and (e) empower authorised officers to require any person to whom section 18F applies, *or any person employed by such person*:

- to produce such books, records or other documents, including provision for information in non-legible form (paragraph (c)), or
- 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

Currently, section 18F(6) extends the duty to produce or provide any information, document, material or explanation to an examiner, liquidator, receiver, official assignee or any person to is or has been an officer, employee or agent of a person to whom the section applies, or who appears

[15] Sections 1 and 2 of the *Insurance (No.2) Act 1983* were amended by Part 7 of Schedule 1 to the *Central Bank and Financial Services Authority of Ireland Act 2003*. The definition of Bank under section 1 was further amended by paragraph 5 of Part 14 of Schedule 2 to the *Central Bank Reform Act 2010*. Under these amendments, such administrators are now appointed following a petition to the High Court by the Central Bank of Ireland.

to the Minister, HIA or authorised officer to have the information, document, material or explanation in his or her possession or under his or her control.

Section 5 of the Bill proposes to change the above so the provision would read as follows:

> The duty to produce or provide any information, document, material or explanation extends **to any person (not being a person to whom this section applies)** 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.

Finally, section 5 provides for the insertion of subsection (11A), which provides for the circumstances where an authorised officer may require a person to provide them with their name and address, and makes a number of amendments to subsection (12) in relation to definitions for "person to whom this section applies" and "relevant undertaking".

Section 6: Amendment of Schedule 4 to the Principal Act

Section 6 proposes to replace Table 2 in Schedule 4 to the Principal Act, which sets out the rates of risk equalisation credits for different age groups and genders. These are also known as Age Related Health Credits.

In its September 2022 Report to the Minister, the HIA proposed several changes to the Risk Equalisation Credits applying to health insurance policies from 1 April 2023 to 31 March 2024. No changes were proposed to rates applying to HUCs (€125 for night and €75 for day), nor was any change proposed to the quota share or threshold for HCCPs, currently set at 40% and €50,000 respectively. The cross over period allowance for HCCPs continues to be included.[16] Thus, the only changes in the Bill relate to ARHCs. Table 2 below further compares the rates contained in the current legislation, which were inserted by the *Health Insurance (Amendment) Act 2021*, and the new rates proposed by the Bill. Table 3 below further breaks down these changes by the amount proposed for 1 April 2023 when compared to current rates.

Table 2: Risk equalisation credits – current rates (inserted by 2021 Act) and those proposed in the *Health Insurance (Amendment) Bill 2022*

Age Bands	Advanced Policies				Non-Advanced Policies			
	Men		Women		Men		Women	
	Now	From 01/04/2023	Now	From 01/04/2023	Now	From 01/04/2023	Now	From 01/04/2023
64 & under	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
65-69	€950	€950	€500	€525	€325	€350	€150	€200
70-74	€1,575	€1,550	€1,075	€1,075	€500	€525	€350	€400
75-79	€2,375	€2,300	€1,700	€1,650	€775	€775	€575	€575
80-84	€2,975	€2,725	€2,125	€1,950	€950	€900	€650	€625
85 and over	€3,550	€3,000	€2,425	€2,050	€1,150	€1,000	€775	€700

Source: L&RS, based on *Health Insurance (Amendment) Act 2021* (current rates) and section 6 of the Bill.

[16] Health Insurance Authority, Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits, 30 September 2022, at p.6.

Table 3: Numerical changes to risk equalisation credits, current rates and rates proposed from 1 April 2023

Age Bands	Advanced Policies		Non-Advanced Policies	
	Men		Women	
64 & under	N/A	N/A	N/A	N/A
65-69	€0	+€25	+€25	+€50
70-74	-€25	+€25	€0	+€50
75-79	-€75	€0	-€50	€0
80-84	-€250	-€50	-€175	-€25
85 and over	-€550	-€150	-€375	-€75

Source: L&RS, based on data contained in Health Insurance Authority, Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits, 30 September 2022.

Section 7: Amendment of section 125A of the Stamp Duties Consolidation Act 1999

As noted above, under the risk equalisation scheme funds are raised by the collection of stamp duties. Stamp duties are levied on insurance companies, not consumers. Therefore, it is up to insurance companies to decide whether or not pass on any changes in the level of stamp duties to their customers.

Section 7 of the Bill proposes to increase stamp duty on some health insurance policies and reduce it on others. It seeks to increase stamp duty on advanced policies – these are held by 92% of health insurance customers and they insure against stays in private hospitals.[17] Section 7 also seeks to reduce stamp duty on non-advanced policies – held by 8% of customers and insuring against stays in private or semi-private accommodation in public hospitals.

Specifically, Section 7 seeks to amend section 125A of the *Stamp Duties Consolidation Act 1999* to provide for revised definitions for "specified rate" for relevant contracts renewed or entered into for the periods from January to March 2023 and from April 2023 onwards. Section 125A itself was inserted by section 26 of the *Health Insurance (Miscellaneous Provisions) Act 2009* and most recently amended by section 8 of the *Health Insurance (Amendment) Act 2021*.

Eight rates are provided for in section 125A, with the relevant rates proposed by the Bill summarised in the below table.

Table 4: Stamp duty rates proposed by the Bill, by age and cover category

Applicable dates	Persons 17 years or under		Persons 18 years or over	
	Non-Advanced	Advanced	Non-Advanced	Advanced
Jan – Mar 2023	€41	€135	€122	€406
Apr 2023 onwards	€36	€146	€109	€438

Source: L&RS, based on section 7 of the Bill.

[17] Health Insurance Authority (2022) Annual Reports and Accounts 2021, p.13

The provisions covering January to March 2023 reflect the amounts of stamp duty provided for by section 8(b) of the *Health Insurance (Amendment) Act 2021*.

Recital (44) of the European Commission decision authorising the continuance of the RES set out the expected increases to stamp duty for each annual period covered by the scheme (1 April to 31 March) from April 2023, but it is noted in Recital (45) that the level of credits and stamp duties is based on calculations by the HIA. The rates in the above table are below the rates included in the European Commission's decision, which were estimates.[18]

Recital (44) of the Commission's decision also noted the impact of the Covid-19 pandemic with the lower level of claims activity from private health insurance consumers, with the resulting €100 million surplus in the Risk Equalisation Fund allowing for lower stamp duties. The Annual Report of the HIA for 2021 also highlighted the impact of the 2021 cyberattack on the HSE.[19]

According to its September 2022 Report, the HIA noted that the estimated surplus of €100 million had been reduced to €55 million, which is reflected in the changes to stamp duty and demonstrates the impact of surpluses or deficits from the REF. The HIA made the case that although it recommended increasing stamp duty rates on advanced policies, that without the surplus they would be recommending greater increases, alongside smaller decreases in stamp duty on the non-advanced plans. Specifically, the HIA noted that:

> "In last year's report the Authority noted that if the surplus in the REF was not applied to the 2022/2023 stamp duty, Advanced stamp duties for adults would be €475, as opposed to €406, and the Non-Advanced adult stamp duty would be €142, as opposed to €122. Thus, the reduction in the estimated surplus is a key contributor to the increase in stamp duty in the period. The Authority notes that if the surplus in the REF was not applied to the 2023/2024 stamp duty, Advanced stamp duties for adults would be €474, as opposed to €438, and the Non-Advanced adult stamp duty would be €118, as opposed to €109."[20]

The Report also references the higher population with health insurance than allowed for in the 2022 calibration.[21]

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[18] European Commission, State Aid SA.64337 (2022/N) – Ireland, Risk Equalisation Scheme 2022, C(2022) 2105 final, 31 March 2022, at p.10, fn.37.

[19] Health Insurance Authority (2022) Annual Reports and Accounts 2021, p.10.

[20] Health Insurance Authority, Report of the Authority to the Minister for Health on an evaluation and analysis of returns from 1 July 2021 to 30 June 2022, including advice on Risk Equalisation Credits, 30 September 2022, at p.38.

[21] Ibid, at p.40. See further for a more detailed description of the rationale for the HIA recommendations.

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