



Number 36 of 2019

Health and Childcare Support (Miscellaneous Provisions) Act 2019



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HEALTH AND CHILDCARE SUPPORT (MISCELLANEOUS PROVISIONS) ACT 2019

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[No. 36.]

*Health and Childcare Support
(Miscellaneous Provisions) Act 2019.*

[2019.]

ACTS REFERRED TO

Childcare Support Act 2018 (No. 11)

Irish Nationality and Citizenship Act 1956 (No. 26)

Irish Nationality and Citizenship Act 2004 (No. 38)



Number 36 of 2019

HEALTH AND CHILDCARE SUPPORT (MISCELLANEOUS PROVISIONS) ACT 2019

An Act to make provision, in the event of the withdrawal of the United Kingdom from membership of the European Union occurring without an agreement between the United Kingdom and the European Union under Article 50 of the Treaty on European Union setting out the arrangements for such withdrawal, for certain matters consequent on such withdrawal and, in particular—

- A. in the spirit of the State's commitment to the British-Irish Agreement done at Belfast on the 10th day of April, 1998, and having regard to the State's membership of the European Union, to make exceptional provision for the reimbursement by the Health Service Executive to eligible persons resident in Northern Ireland of certain medical expenses incurred in a Member State in respect of necessary medical treatment during their stay in that Member State, and
- B. having regard to the Common Travel Area between the State and the United Kingdom, to make provision for eligibility of certain persons to apply for financial support under the Affordable Childcare Scheme, and for that purpose to amend the Childcare Support Act 2018,

And to provide for related matters.

[24th October, 2019]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, commencement and collective citation

1. (1) This Act may be cited as the Health and Childcare Support (Miscellaneous Provisions) Act 2019.
- (2) *Parts 1 and 2* shall come into operation on such day or days as the Minister for Health may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

- (3) *Part 3* shall come into operation on such day or days as the Minister for Children and Youth Affairs may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (4) A power under this section to appoint a day on which a Part (or a provision thereof) shall come into operation, whether generally or otherwise, includes a power to appoint a particular time, on a particular day, at which the Part (or provision thereof) shall come into operation, whether generally or otherwise, and, accordingly, where a time is so appointed, the Part concerned (or provision thereof) shall come into operation at that time, whether generally or otherwise.
- (5) *Part 3* and the Childcare Support Act 2018 may be cited together as the Childcare Support Acts 2018 and 2019.

Expenses

2. The expenses incurred by the Minister for Health and the Minister for Children and Youth Affairs in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

PART 2

HEALTH

Definitions and application (*Part 2*)

3. (1) In this Part—

“British citizen” has the same meaning as it has in section 6A (inserted by section 4 of the Irish Nationality and Citizenship Act 2004) of the Irish Nationality and Citizenship Act 1956;

“eligible person” means—

- (a) an Irish citizen who is ordinarily resident in Northern Ireland,
- (b) a British citizen who is ordinarily resident in Northern Ireland, or
- (c) a citizen of a Member State who is ordinarily resident in Northern Ireland;

“European Health Insurance Card” means the card issued by the Executive in the State and known as the European Health Insurance Card;

“Executive” means the Health Service Executive;

“medical expenses” means the cost of medical care, and products and services ancillary to that care, that are incurred by an eligible person in respect of necessary medical treatment;

“Member State” means—

- (a) a Member State of the European Union, other than the State,
- (b) not being such a Member State, a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993, and
- (c) Switzerland;

“Minister” means the Minister for Health;

“necessary medical treatment” means, in relation to an eligible person, the treatment that becomes medically necessary and which the person would be entitled to receive during a temporary stay in a Member State pursuant to a European Health Insurance Card were he or she the holder of, or entitled to, such card;

“prescribed” means prescribed by regulations under *section 5*.

- (2) This Part applies to medical expenses incurred on or after the date on which *section 4* comes into operation.

Reimbursement of medical expenses incurred by eligible persons in respect of necessary medical treatment

4. (1) Where an eligible person incurs medical expenses in a Member State, in respect of necessary medical treatment, he or she or a person acting on his or her behalf may apply to the Executive for reimbursement of those expenses.
- (2) An application under *subsection (1)* shall be made in the prescribed form and manner.
- (3) On receipt of an application under *subsection (1)*, the Executive shall reimburse the eligible person, or the person acting on his or her behalf, in the prescribed form and manner, where it is satisfied that—
- (a) the person in respect of whom the application is made is an eligible person,
 - (b) the treatment in respect of which reimbursement is sought is necessary medical treatment, and
 - (c) he or she, or a person acting on his or her behalf, has complied with this section and any regulations made under *section 5*.
- (4) When calculating the medical expenses to be reimbursed in accordance with this section, the Executive shall endeavour to ensure that, as far as practicable, it does not assess an application in respect of an eligible person less favourably or more favourably than it would assess an application of a person who is entitled to and holds a European Health Insurance Card.
- (5) Where the Executive makes a reimbursement to a person in accordance with this section and it subsequently ascertains that the person was not entitled to that reimbursement, or part of that reimbursement, because—
- (a) the person was not an eligible person,

- (b) the treatment in respect of which reimbursement was sought was not necessary medical treatment, or
- (c) the person did not comply with this section and any regulations made under *section 5*,

the reimbursement, or that part of the reimbursement that the person was not entitled to, shall be recoverable by the Executive in any court of competent jurisdiction as a simple contract debt.

Regulations

5. (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, following consultation with the Executive and having regard to the matters specified in *subsection (2)*, make regulations for the purposes of giving full effect to this Part and such regulations may, in particular, but without prejudice to the generality of the foregoing, provide for all or any of the following:
- (a) the form and manner in which, and the period during which, an application under *section 4* shall be made;
 - (b) the form and manner in which the Executive shall reimburse an eligible person, or a person acting on his or her behalf, for medical expenses incurred in respect of necessary medical treatment provided in a Member State;
 - (c) the documentation and certifications, including proof of citizenship and residence required to accompany an application under *section 4*;
 - (d) the class or classes of persons who may, in respect of an eligible person, make an application under *section 4*;
 - (e) such forms as may be necessary for the purposes of *paragraphs (a) to (d)*;
 - (f) such additional, incidental, consequential or supplemental matters as the Minister considers necessary or expedient for the purposes of giving effect to this Part.
- (2) When making regulations under *subsection (1)*, the Minister shall have regard to the following:
- (a) the proper and efficient administration of the reimbursement under *section 4*, of medical expenses incurred by an eligible person;
 - (b) the need to ensure the most beneficial, effective and efficient use of resources when reimbursing the expenses referred to in *paragraph (a)*;
 - (c) the policies and objectives of the Government, having regard to the State's commitment to the British-Irish Agreement and the State's membership of the European Union, to enable certain arrangements in relation to health services in respect of eligible persons to be maintained after the withdrawal of the United Kingdom from membership of the European Union.

- (3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House sits after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulations.
- (4) In this section, “British-Irish Agreement” means the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on the 10th day of April, 1998.

Administrative arrangements between Executive and competent institutions

6. (1) The Executive may, for the purposes of this Part, enter into an administrative and technical arrangement with a competent institution for the purposes of—
 - (a) processing the reimbursement of medical expenses in respect of necessary medical treatment received by an eligible person during a temporary stay in the Member State concerned,
 - (b) calculating the total value of medical expenses to be reimbursed in respect of necessary medical treatment received by an eligible person in the Member State concerned,
 - (c) exchanging such information as may be necessary between the Executive and the competent institution to enable the processing of the reimbursement of medical expenses, and
 - (d) facilitating administrative and technical cooperation between the Executive and the competent institution in relation to the reimbursement of medical expenses in respect of necessary medical treatment received by an eligible person in the Member State concerned.
- (2) The parties to an arrangement under this section may vary the terms of the arrangement.
- (3) An arrangement under this section, or any variation of such an arrangement, shall be in writing.
- (4) The Executive shall provide the Minister with a copy of each arrangement under this section and any variation thereof.
- (5) In this section, “competent institution” means, in relation to a Member State, an institution designated by that Member State as responsible for the provision of healthcare and treatment to an eligible person during his or her stay in the Member State concerned.

Executive may have regard to certain decisions of Administrative Commission

7. (1) The Executive may have regard to decisions of the Administrative Commission in respect of administrative questions and questions of interpretation referred to in

Article 72(a) of Regulation (EC) No. 883/2004 that the Executive considers may be relevant to the administration of this Part.

(2) In this section—

“Administrative Commission” means the Administrative Commission referred to in Article 71 of Regulation (EC) No. 883/2004;

“Regulation (EC) No. 883/2004” means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004¹ on the coordination of social security systems.

Review of operation of Part 2

8. (1) The Executive shall carry out a review of the operation of this Part not later than 2 years after the commencement of this section.
- (2) The Executive shall submit a report to the Minister of the findings of a review carried out under *subsection (1)* and, not later than one month after such submission, the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

PART 3

AMENDMENT OF CHILDCARE SUPPORT ACT 2018

Definition (Part 3)

9. In this Part, “Principal Act” means the Childcare Support Act 2018.

Amendment of section 7 of Principal Act

10. Section 7(1)(b) of the Principal Act is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a British citizen, or”.

Amendment of section 15 of Principal Act

11. Section 15(2)(c) of the Principal Act is amended by the insertion of the following subparagraph after subparagraph (iv):

“(iva) a British citizen, or”.

¹ OJ No. L 166, 30.4.2004, p. 1.