



Number 10 of 2013

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[No. 10.] *Health (Alteration of Criteria For Eligibility) Act 2013.* [2013.]

ACTS REFERRED TO

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Health Act 1970	1970, No. 1
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Residential Institutions Redress Act 2002	2002, No. 13
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Number 10 of 2013

**HEALTH (ALTERATION OF CRITERIA FOR ELIGIBILITY)
ACT 2013**

AN ACT TO AMEND THE HEALTH ACT 1970 AND TO MAKE PROVISION IN RELATION TO ELIGIBILITY FOR SERVICES UNDER THAT ACT; TO MAKE PROVISION FOR THE FURNISHING OF PERSONAL DATA IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[28th March, 2013]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Health (Alteration of Criteria for Eligibility) Act 2013.

Short title,
collective citation
and
commencement.

(2) This Act and the Health Acts 1947 to 2011 may be cited together as the Health Acts 1947 to 2013 and shall be construed together as one.

(3) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

2.—In this Act “Minister” means the Minister for Health.

Definition.

PART 2

AMENDMENT OF HEALTH ACT 1970

3.—Section 45A of the Health Act 1970 is amended—

Amendment of
section 45A of
Health Act 1970.

(a) in subsection (1) by the deletion of paragraph (b),

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Where—

(a) a person—

- (i) was married to another person until that other person’s death,
- (ii) was living with another person as husband and wife until that other person’s death, or
- (iii) was a civil partner as respects another person until that other person’s death,

and

(b) the death of the other person occurred on or after 1 January 2009, and

(c) the surviving person had attained the age of 70 years at the time of the death of that other person,

the gross income limit applicable to the surviving person in the 3 years following the death of that other person shall—

- (i) as respects the period commencing on 1 January 2009 and ending on 4 April 2013 be the amount specified in subsection (3)(a)(ii), and
- (ii) with effect from 5 April 2013 be the amount specified in subsection (3)(b)(ii),

but such gross income limit shall apply only as respects such part of the 3 year period as the surviving person is not married, is not living together with another person as husband and wife, or does not have a civil partner.”,

(c) by the substitution of the following for subsection (3):

“(3) The gross income limits for the purposes of this section and section 45(5A) are the following:

(a) in respect of the period commencing on 1 January 2009 and ending on 4 April 2013—

(i) if a person—

(I) is not married, and is not living together with another person as husband and wife, or

(II) does not have a civil partner,

his or her gross income limit is €700 per week, not including the income from the portion of the person’s savings or similar investments whose capital value does not exceed €36,000, and

(ii) if persons—

(I) are married or live together as husband and wife, or

(II) are civil partners as respects each other,

their combined gross income limit is €1,400 per week, not including the income from the portion of their savings or similar investments whose capital value does not exceed €72,000,

and

(b) with effect from 5 April 2013—

(i) if a person—

(I) is not married, and is not living together with another person as husband and wife, or

(II) does not have a civil partner,

his or her gross income limit is €600 per week, not including the income from the portion of the person's savings or similar investments whose capital value does not exceed €36,000, and

(ii) if persons—

(I) are married or live together as husband and wife, or

(II) are civil partners as respects each other,

their combined gross income limit is €1,200 per week, not including the income from the portion of their savings or similar investments whose capital value does not exceed €72,000.”,

(d) in subsection (4) by the substitution of “increase or decrease” for “increase” wherever it occurs, and

(e) by the insertion after subsection (7) of the following subsection:

“(8) In this section ‘civil partner’ has the same meaning as it has in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.”.

4.—The Health Act 1970 is amended by the substitution of the following for section 47:

Amendment of section 47 of Health Act 1970.

“Appeals. 47.—(1) When, in the administration of section 45, 45A, 46, 58 or 58A, an employee of the Health Service Executive decides that a person does not come within a category specified by or under the

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[No. 10.]

Health (Alteration of Criteria For Eligibility) Act 2013. [2013.]

relevant section, an appeal shall lie from the decision to a person (who may be an employee of the Health Service Executive) appointed or designated for that purpose by the Minister.

(2) The Minister may by regulations provide for the making and determination of appeals under this section.”.

Amendment of section 47A of Health Act 1970.

5.—The Health Act 1970 is amended by the substitution of the following for section 47A:

“Guidelines on ‘ordinarily resident in the State’.

47A.—The Minister may issue guidelines to—

(a) the Health Service Executive, and

(b) persons appointed or designated by him or her under section 47(1),

to assist those persons in making decisions or determining appeals as to whether a person is ordinarily resident in the State for the purposes of section 45, 45A, 46, 58 or 58A.”.

Insertion of section 48A in Health Act 1970.

6.—The Health Act 1970 is amended by the insertion, after section 48, of the following section:

“Review of eligibility in certain circumstances.

48A.—(1) A person who by reason of section 45(5A) or section 45A had, prior to the coming into operation of this section, been notified by the Health Service Executive that he or she had full eligibility under this Part, shall, when requested to do so by the Health Service Executive, furnish to the Health Service Executive such information regarding that person’s income and assets as the Health Service Executive considers necessary for it to establish if that person has or continues to have full eligibility.

(2) Where a person fails or refuses to furnish the information requested by the Health Service Executive under subsection (1) within such reasonable period as is specified in the request the Health Service Executive may suspend or cancel the full eligibility of such person.

(3) A person who by reason of section 45(5A) or section 45A had, prior to the coming into operation of this section, been notified by the Health Service Executive that he or she had full eligibility under this Part and who by reason of the amendments to section 45A effected by *section 3 of the Health (Alteration of Criteria for Eligibility) Act 2013* ceases to have such eligibility, shall retain such eligibility until 31 May 2013.”.

7.—The Health Act 1970 is amended by the insertion, after section 58, of the following section: Insertion of section 58A in Health Act 1970.

“General practitioner medical and surgical service for certain persons over 70 years of age.

58A.—(1) The Health Service Executive shall make available without charge a general practitioner medical and surgical service for a person who is ordinarily resident in the State in one of the following categories—

(a) persons—

(i) who on or after 5 April 2013, attain or have attained the age of 70 years,

(ii) who have limited eligibility,

(iii) whose gross income does not exceed the relevant gross income limit, and

(iv) who—

(I) make an application to the Health Service Executive in such form as it may consider appropriate, and

(II) receive confirmation from the Health Service Executive that they have qualified for services under this section because they have attained the age of 70 years, are ordinarily resident in the State and their gross income does not exceed the relevant gross income limit,

so long as their gross income does not exceed that relevant limit,

and

(b) dependants of persons referred to in paragraph (a).

(2) The gross income limits for the purposes of this section are the following:

(a) if a person—

(i) is not married, and is not living together with another person as husband and wife, or

(ii) does not have a civil partner,

his or her gross income limit is €700 per week, not including the income

from the portion of the person's savings or similar investments whose capital value does not exceed €36,000, and

(b) if persons—

(i) are married or live together as husband and wife, or

(ii) are civil partners as respects each other,

their combined gross income limit is €1,400 per week, not including the income from the portion of their savings or similar investments whose capital value does not exceed €72,000.

(3) Where—

(a) a person—

(i) was married to another person until that other person's death,

(ii) was living with another person as husband and wife until that other person's death, or

(iii) was a civil partner as respects another person until that other person's death,

and

(b) the death of the other person occurred on or after 5 April 2013, and

(c) the surviving person had attained the age of 70 years at the time of the death of that other person,

the gross income limit applicable to the surviving person in the 3 years following the death of that other person shall be that specified in paragraph (b) of subsection (2) for such part of that period as the surviving person is not married, living together with another person as husband and wife, or does not have a civil partner.

(4) The Health Service Executive shall provide any necessary supports to any person in the making of an application under subsection (1) where, by reason of any incapacity, such person requests such assistance.

(5) The Minister shall, on 1 September of every year, review the most recent information on the consumer price index made available by the Central Statistics Office, and may, with the consent of the Minister for Public Expenditure and Reform,

by regulations to take effect on 1 January next following that review, increase or decrease the gross income limits specified for the purposes of this section to reflect any increase or decrease in that index.

(6) In the calculation of gross income for the purposes of this section, all gross income from all sources is to be included except for the gross income arising from the following sources of income, and any subsequent income from the investment of the monies arising from those sources:

- (a) compensation awards to persons under the Hepatitis C Compensation Tribunal Acts 1997 to 2006;
- (b) compensation awards by way of the Residential Institutions Redress Board established under section 3 of the Residential Institutions Redress Act 2002;
- (c) prescribed repayments made under section 8 of the Health (Repayment Scheme) Act 2006 made—
 - (i) to a living relevant person,
 - (ii) to the spouse or former spouse of a living or deceased relevant person,
 - (iii) directly to a living child of a relevant person by virtue of section 9(8) of that Act;
- (d) *ex-gratia* awards approved by the Lourdes Hospital Redress Board under the terms of the Lourdes Hospital Redress Scheme 2007;
- (e) similar awards and payments set out in regulations made under subsection (8).

(7) In the calculation of gross income for the purposes of this section, income will not be imputed from property comprising an interest in land (whether a family home, a holiday home or any other property), other than the net rental income (calculated as gross rental income, less any cost necessarily incurred and associated with the rental of the property).

(8) The Minister may make regulations prescribing a class or classes of payments not coming within paragraphs (a) to (d) of subsection (6) but which the Minister considers to be made for a similar purpose as those made under those paragraphs.

(9) Insofar as it is considered practicable by the Health Service Executive, a choice of medical

practitioner shall be offered under the general practitioner medical and surgical service made available under this section.

(10) In this section ‘civil partner’ has the same meaning as it has in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.”.

PART 3

FURNISHING OF PERSONAL DATA IN CERTAIN CIRCUMSTANCES

Furnishing of personal data to and by Health Service Executive in certain circumstances.

8.—(1) The Health Service Executive may request—

- (a) the Minister for Social Protection, or
- (b) the Revenue Commissioners,

to furnish to it personal data held by that Minister of the Government or the Commissioners, as the case may be, when it requires the personal data for the purpose of assessing or reviewing the eligibility of persons for services provided under the *Health Acts 1947 to 2013*.

(2) The Minister for Social Protection may request the Health Service Executive to furnish to him or her personal data held by the Health Service Executive when he or she requires the personal data for the purpose of calculating the means of persons to assess or review the entitlement of such persons to the receipt of benefits and services provided under the Social Welfare Acts.

(3) The Revenue Commissioners may request the Health Service Executive to furnish to them personal data held by the Health Service Executive when the Commissioners require the personal data for the purpose of assessing or collecting any tax, duty or other charge payable to the Revenue Commissioners.

(4) Notwithstanding anything contained in the Data Protection Acts 1988 and 2003, but subject to this section, a person who receives a request made in accordance with *subsection (1), (2) or (3)* shall comply with that request and shall do so in accordance with an agreement entered into under *subsection (5)* between the person and the person who made the request.

(5) For the purposes of this section, there shall be entered into between the Health Service Executive and each of the following—

- (a) the Minister for Social Protection, and
- (b) the Revenue Commissioners,

an agreement (a “data exchange agreement”) which shall specify the procedures to be followed by each party to the agreement with respect to the furnishing of personal data in compliance with a request made under *subsection (1), (2) or (3)*.

(6) A data exchange agreement may be varied by the parties to the agreement.

(7) The Health Service Executive shall consult with the Data Protection Commissioner in relation to a data exchange agreement before it is entered into or varied.

(8) The Data Protection Acts 1988 and 2003 shall apply to any personal data furnished to a person under this section.

(9) For the avoidance of doubt, it is hereby declared that references in this section to personal data shall include references to sensitive personal data.

(10) In this section, “personal data” and “sensitive personal data” have the meanings respectively assigned to them by section 1 (as amended by section 2 of the Data Protection (Amendment) Act 2003) of the Data Protection Act 1988.

(11) Nothing in this section shall affect the operation of section 261 or 265 of the Social Welfare Consolidation Act 2005.