STATUTORY INSTRUMENTS

S.I. No. 261 of 2003

RISK EQUALISATION SCHEME, 2003

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RISK EQUALISATION SCHEME, 2003

I, Micheál Martin, Minister for Health and Children, in exercise of the powers conferred on me by sections 3 and 12 of the Health Insurance Act, 1994 (No. 16 of 1994) as amended and substituted by sections 9, 10 and 13 of the Health Insurance (Amendment) Act, 2001 (No. 17 of 2001) and section 5 of the Health Insurance (Amendment) Act, 2003 (No. 11 of 2003), hereby make and prescribe the following Scheme-

PART I

GENERAL

1. This Scheme may be cited as the Risk Equalisation Scheme, 2003.

2. Articles 1 to 10, 13 and 14 of this Scheme shall come into operation on the 1st day of July, 2003.

   Articles 11 and 12 shall come into operation on a day determined in accordance with Article 13.

3. In this Scheme ---

   "Act" means the Health Insurance Act, 1994, (No. 16 of 1994) as amended by the Health Insurance (Amendment) Act, 2001, (No. 17 of 2001) and the Health Insurance (Amendment) Act, 2003 (No. 11 of 2003);

"Authority" means The Health Insurance Authority established under Part IV of the Act;

"appropriate health services" means health services in relation to the diagnosis or treatment of the illness or injury of a patient which would be accepted generally by the medical profession as appropriate and necessary, having regard to good standards of medical practice and to the nature and cost of any alternative forms of treatment as well as to all of the circumstances relevant to the patient;

"calculation error" means an error on the part of the Authority or its agents in the calculation of payments under section 12 (4) (a) of the Act;

"cell" or "specified cell" means a group of insured persons who belong to both a common gender and a common prescribed age band;

"cell equalised benefits" has the meaning assigned to it in the Second Schedule;

"cell claim value" has the meaning assigned to it in the Second Schedule;

"claim" means an application by, or on behalf of, an insured person to a registered undertaking for the discharge or reimbursement, under the terms of a health insurance contract, of all or part of the fees or charges due to a health services provider in respect of the provision of prescribed health services during a hospital stay or stays;

"corrective payment" means a payment made to, or an amount recovered from, a health services provider or an insured person in respect of prescribed health services for which an incorrect payment, other than one arising from a systematic error in the method of processing claims, was made;

"day-patient day" means a day, including a day upon which an in-patient stay commences and ceases, during the course of which an insured person is maintained in private hospital accommodation for the purpose of receiving day-patient services;

"data adjustment" has the meaning assigned to it in Article 9 of this Scheme;

"day-patient services" has the meaning assigned to it in section 2 of the Act;

"dependent person" has the meaning assigned to it in section 1 of the Health (Nursing Homes) Act, 1990, (No.23 of 1990);

"equalisation contribution" has the meaning assigned to it in the Second Schedule;

"fixed price procedure" means any prescribed health service, the benefit for which is payable by an undertaking to a publicly funded hospital or a private hospital, on behalf of an insured person by reference to a specified monetary amount agreed between the undertaking and the hospital as representing full settlement of all charges and fees arising;

"gross provider payment" means, in respect of a settled claim, a payment or payments, based on proper and correct accounts, due, or nominally due, from a registered undertaking to a health services provider or in respect of services rendered by that provider, disregarding the effect of:

(a) any third party recoveries made in respect of that claim,

(b) any corrective payments in respect of that claim, and

(c) any discounts, overall limits or like reductions or bonuses or other additional compensation which may have been agreed between that provider and that undertaking;

"health insurance business" has the meaning assigned to it in section 2 of the Act;

"health insurance contract" has the meaning assigned to it in section 2 of the Act;

"health services provider" means a publicly-funded hospital, private hospital, registered nursing home or hospital, private psychiatric hospital or hospital consultant, as appropriate;

"health status weight" has the meaning assigned to it in the Second Schedule;

"hospital consultant" means a registered medical practitioner who holds a current full registration with the Irish Medical Council and is engaged in hospital practice and who, by reason of his or her training, skill and experience in a designated speciality, is consulted by other registered medical practitioners and undertakes full clinical responsibility for patients in his or her care, or that aspect of care on which he or she has been consulted, without supervision in professional matters by any other person;

"hospital in-patient services" has the meaning assigned to it in section 2 of the Act;

"hospital stay" means an in-patient stay or a day-patient day;

"in-patient day" means a day during an in-patient stay where the day on which the stay ceased is deemed a whole day and the day on which that stay commenced is disregarded, except that if that stay commenced and ceased on the same day then that day shall be deemed a day-patient day;

"in-patient stay" means a continuous period during which an insured person is maintained in private hospital accommodation for the purpose of receiving hospital in-patient services, such period

(a) to commence on occurrence of the later of the following events-

(i) the most recent admission or transfer of that person to private hospital accommodation, or

(ii) the cessation of the most recent previous hospital in-patient stay in respect of that person, and

(b) to cease on the occurrence of the earlier of the following events-

(i) the next subsequent discharge or transfer of that person from private hospital accommodation,

(ii) the death of that person, or

(iii) on the date designated as the cessation date of that period by the registered undertaking which effected the health insurance contract under which that person is named;

"initial waiting period" has the meaning assigned to it in the Health Insurance Act 1994 (Open Enrolment) Regulations,1996, (S.I. No. 81 of 1996);

"insured person" means:

(a) a person named in a health insurance contract as an insured person, and

(b) from date of birth, any infant born to any person named in a health insurance contract, provided that the person who effected the said contract requests that it be altered to name any such infant as an insured person, and pays the appropriate premium, if any, in that respect, within 13 weeks of the infant's date of birth,

but does not include:

(i) any person named in a health insurance contract which relates solely to relevant health services, or

(ii) any person named in a health insurance contract which relates solely to public hospital daily in-patient charges made under Regulations pursuant to section 53 of the Health Act, 1970, (No.1 of 1970), or

(iii) any person who, for the time being, does not qualify for payments in respect of prescribed health services under a health insurance contract because he or she has not completed an initial waiting period;

"market equalisation percentage" has the meaning assigned to it in the Second Schedule;

"medical condition" means any disease, illness or injury;

"Minister" has the meaning assigned in the Act;

"net provider payment" has the meaning assigned to it in Article 8;

"nursing home" or "registered nursing home" has the meaning assigned to it in section 2 of the Health (Nursing Homes) Act, 1990, (No.23 of 1990);

"period" means two consecutive quarters ending on the 30th day of June and on the 31st day of December in any given year;

"prescribed age band" means one of the following age groupings, where age is attained age (in whole years) of the person at the start of a specified period:

(a) Age 17 and under
(b) Age 18 to age 29
(c) Age 30 to age 39
(d) Age 40 to age 49
(e) Age 50 to age 59
(f) Age 60 to age 69
(g) Age 70 to age 79
(h) Age 80 and over;

“prescribed equalised benefits” has the meaning assigned to it in Article 8;

“prescribed health services” means:

(a) hospital in-patient services, including any day-patient service, or

(b) health services provided by a hospital consultant in conjunction with a hospital stay, or

(c) in relation to health services received outside the State, services equivalent to those at (a) and (b) provided in accordance with the terms of a health insurance contract;

where such services are provided-

(i) as a result of the patient having been referred to the health services provider by a registered medical practitioner, or

(ii) in an emergency, or

(iii) in connection with an obstetric condition,

and are appropriate health services, the sole purpose of which is the medical investigation, treatment, cure or alleviation of the symptoms, of illness or injury but excluding-

(I) treatment directly or indirectly arising from, or required in connection with, male and female birth control, infertility or any form of assisted reproduction,

(II) dental, orosurgical or orthodontic treatment or consultation with a dental practitioner,

(III) cosmetic services or treatment except the correction of accidental disfigurement or significant congenital disfigurement,

(IV) health services relating to eating disorders or weight reduction,

(V) preventive health services such as check-ups or screenings,

(VI) health services provided by a nursing home other than a registered nursing home,

(VII) nursing care, whether provided in an institution or otherwise, to persons who are dependent persons,

(VIII) health services necessitated directly or indirectly by war or civil disturbance;

"private hospital" means a hospital, including a facility registered pursuant to the Mental Treatment Act, 1945, (No.19 of 1945), other than a nursing home, or a hospital outside of the State, which-

(a) provides prescribed health services, and

(b) is not a publicly-funded hospital;

"private hospital accommodation" means accommodation in a private hospital or accommodation in a publicly-funded hospital which is designated, under Article 8(ii) of the Health Services (In-Patient) Regulations 1991, (S.I. No.135 of 1991) as private or semi-private accommodation;

"private psychiatric hospital" means a facility registered pursuant to the Mental Treatment Act, 1945, (No.19 of 1945);

"publicly-funded hospital" means a hospital, other than a private hospital or nursing home, which provides services to a person pursuant to his or her entitlement under Chapter II of Part IV of the Health Act, 1970 (No.1 of 1970);

"quarter" has the meaning assigned to it in section 2 of the Act;

"registered medical practitioner" means a person whose name appears in the General Register of Medical Practitioners maintained under the Medical Practitioners Acts, 1978, (No.4 of 1978) and 1993, (No.17 of 1993);

"registered" in relation to an undertaking has the meaning assigned to it in section 2 of the Act;

"relevant health service" has the meaning assigned to it in section 2 of the Act;

"restricted membership undertaking" has the meaning assigned to it in section 2 of the Act;

"returning undertakings" means all registered undertakings, excluding any registered undertaking which, pursuant to section 12B of the Act, is for the time being not required to make a return under Article 9;

"risk equalisation" has the meaning assigned to it in section 2 of the Act;

"risk equalisation commencement day" has the meaning assigned to it in Article 13;

"risk equalisation fund" has the meaning assigned to it in Article 12;

"scheme undertakings" means all returning undertakings, excluding any undertaking which, pursuant to section 12B of the Act, is for the time being exempted from any of the provisions of a scheme;

"screening" means a medical examination or test that is not reasonably required for the diagnosis of, or management of, the medical condition of an insured person;

"settled claim" means a claim in respect of which payments due have been made, disregarding any hospital stays which have been taken into account under a previous settled claim;

"third party recovery" means a payment made to a registered undertaking as a result of payments made by a third party for fees or charges arising from the provision of prescribed health services to an insured person;

"undertaking" has the meaning assigned to it in section 2 of the Act, except that it shall exclude the following:

(a) any restricted membership undertaking to which the provisions of a scheme do not apply pursuant to Article 4, or

(b) any registered undertaking to which the provisions of a scheme do not apply pursuant to Article 5.

4. A scheme shall not, at any time, apply to a restricted membership undertaking which, having satisfied the conditions specified in subsection 2(b) of section 12 of the Act, has served a notice on the Minister in accordance with the said subsection, on or before the 30th day of September 2003.

5. A scheme shall not apply to so much of the activities of a registered undertaking as consist of effecting health insurance contracts that solely provide for the making of payments for the reimbursement or discharge in whole or in part of fees or charges in respect of the provision of relevant health services.

6. In this Scheme, unless the context provides otherwise, a reference to:

(a) an Article, means a reference to an Article of this Scheme,

(b) a sub-article, means a reference to a sub-article in the Article to which it is referred, and

(c) a schedule, is a reference to a schedule in this Scheme.

7. The Authority shall have all powers that are necessary for or incidental to the performance of its functions in relation to this Scheme.

PART II

DETERMINATION OF BENEFITS TO BE EQUALISED

8. (1) From the date specified in Article 9(3), each returning undertaking shall calculate and record, in respect of each settled claim, the amount of prescribed equalised benefits in accordance with the provisions of this Article and the Schedules to this Scheme.

(2) In respect of each settled claim and for each health services provider, the undertaking shall determine an amount (herein referred to as the "net provider payment"), being the gross provider payment in respect of that claim and that provider multiplied by an amount determined in accordance with the formula:

$$\frac{\mathbf{A}}{\mathbf{B}}$$

where, for the quarter in which that claim was settled,

A is the sum of:

(a) the total of actual amounts which that undertaking has paid, disregarding the effect of any corrective payments and third party recoveries, in respect of all settled claims which acquired that status during that quarter, and

(b) the net total of corrective payments relating to that undertaking during that quarter, provided that this amount shall be subject to an upper limit of 0.5% of B and be subject to a lower limit of –0.5% of B, reduced by the total of any third party recoveries made by that undertaking during that quarter; and

B is the sum of :

that undertaking’s gross provider payments under all settled claims which acquired that status during that quarter.

(3) The prescribed equalised benefits in respect of each settled claim shall be the sum of net provider payments under that claim, where each net provider payment is subject to the maximum limits specified in the First Schedule as regards the type of payments contained therein.

PART III

SPECIFICATION AND MAKING OF RETURNS

9. (1) Each returning undertaking shall make returns to the Authority in accordance with section 12 of the Act.

(2) All returns shall relate to a period or part thereof.

(3) The first return shall be due in respect of the period starting on 1st day of July, 2003 and the second and subsequent returns shall be in respect of successive periods respectively.

(4) Form No. 1 set out in the Third Schedule shall be the prescribed form of return to be completed by each returning undertaking and submitted to the Authority under a scheme.

(5) Each return shall contain, for each quarter within the period to which the return relates, the details specified herein in respect of each cell by gender and related aggregate details:

(a) the number of insured persons on the first day of the quarter concerned,

(b) the cell equalised benefits for the quarter concerned,

(c) the cell claim value for the quarter concerned,

(d) the aggregate details in respect of (a), (b), and (c) for the gender concerned, and

(e) the aggregate details corresponding to (a), (b) and (c) for all cells for both genders combined.

(6) Each return shall be confirmed by two officers of the returning undertaking concerned, who are authorised to do so by the Board, Trustees, or other like authority, of that undertaking. As specified in the Third Schedule, one of the signatories of a return shall be or hold one of the following positions in an undertaking, Managing Director, Chief Executive Officer, Company Secretary, Board Member, Trustee or a person of similar status. The Authority may require a return to be further validated in such manner as it may decide and notify in writing to each returning undertaking.

(7) Each return shall be submitted to the Authority within 30 days of the end of the period to which it relates.

(8) If a returning undertaking detects or otherwise becomes aware of an error in a return which has been made, other than errors which have previously been taken into account as corrective payments in the calculation of a net provider payment under sub-article (2) of Article 8, it shall immediately notify the Authority, and, within 7 days thereof submit a corrected return (to be known for the purposes of this Scheme as a "data adjustment"), together with a report setting out the reasons the error occurred and the steps which have been taken to prevent a recurrence.

(9) Where a data adjustment is received after the end of the period specified in sub-article (7), the Authority shall have the power to determine whether it is to be taken into account in respect of its evaluation or calculations, as the case may be, for the most recently completed period, or for the next period to be completed.

PART IV

ANALYSIS OF RETURNS, PREPARATION OF A REPORT, CONSULTATION AND DETERMINATION PROCESS

10. (1) In this part of the Scheme a reference to:

"health insurance consumer" shall be construed in accordance with section 12(10)(a)(i) of the Act;

"insured risks among registered undertakings" shall be construed in accordance with section 12(10)(a)(ii) of the Act;

"the best overall interests of health insurance consumers" shall be construed in accordance with section 12(10)(a)(iii) of the Act.

(2) The Authority shall evaluate and analyse each return made to it, and all such returns collectively, for the purpose of ascertaining the differences, if any, in the nature and distribution of insured risks among scheme undertakings. From that evaluation and analysis, the Authority shall, for the particular period under consideration, determine, in accordance with the Second Schedule, the market equalisation percentage.

(3) The Authority shall prepare and furnish a written report to the Minister giving details of the evaluation and analysis carried out. The report shall specify the market equalisation percentage determined and the health status weight adopted for the purpose of such determination and may contain such other information and advice concerning the carrying on of health insurance business, and developments in relation to health insurance generally, as the Authority considers ought to be included as a result of the evaluation and analysis.

(4) The report shall include a recommendation to the Minister, where, as a result of its evaluation and analysis, the Authority determines the nature and distribution of

risks among scheme undertakings, as expressed in the scheme by the market equalisation percentage, to be not less than 2%, and not more than 10%. In any such recommendation, the Authority shall inform the Minister whether he/she ought or ought not, as it considers appropriate having had regard to the best overall interests of health insurance consumers, to exercise his/her powers under Article 13. The Authority's report shall contain the reasons for the recommendation provided. The Authority shall not be required to include a recommendation in any report submitted after the Minister has exercised the said powers.

(5) Where, pursuant to sub-article (4), the Authority is required to include in a report to the Minister a recommendation that he/she ought or ought not, as it considers appropriate, to exercise the aforementioned powers, the Authority shall not finally decide what the nature of the said recommendation shall be until the conditions specified in subsection 12(5) of the Act have been fulfilled by it.

(6) Where, on foot of a recommendation from the Authority that he/she ought to exercise the aforementioned powers, the Minister, following consideration of the Authority's report, proposes to make such a determination, he/she shall not finally decide to do so until the conditions specified in subsection (12)(6) of the Act have been fulfilled by him/her.

(7) Where, as a result of its evaluation and analysis, the Authority in its report advises that the nature and distribution of risks, among scheme undertakings, as expressed in the scheme by the market equalisation percentage, has been calculated to be more than 10%, the Minister shall make a determination to exercise the aforementioned powers, unless it appears to him/her having consulted the Authority in relation to the overall best interests of health insurance consumers that there are good reasons for not doing so. The Minister shall not finally decide whether to make the said determination until the conditions specified in subsection 12 (6) of the Act have been fulfilled by him/her.

(8) Any scheme undertaking which has made a return shall, on being requested to do so by the Authority, furnish to the Authority such information or documents in its

possession or capable of being procured by it and forming the basis of that return as may be specified in the said request. The undertaking concerned shall comply with such a request not later than 7 days from the date the request is made.

(9) Any registered undertaking which has made representations, under subsection 12(5) of the Act to the Authority or, under subsection 12(6) of the Act to the Minister, shall on being requested to do so by the Authority, or the Minister, as the case may be, furnish to the Authority or the Minister such information or documents in its possession or capable of being procured by it and forming the basis of those representations as may be specified in the said request. The undertaking concerned shall comply with such a request not later than 7 days from the date the request is made.

(10) A report made by the Authority in accordance with sub-article (3) and involving a recommendation of the kind provided for under sub-article (4) shall reach the Minister not later than 120 days from the end of the period to which it relates. The Minister shall make a determination under this Article in respect of such a report not later than 60 days from the date of receipt of the said report and recommendation from the Authority.

(11) A report made by the Authority in accordance with sub-article (3) and involving advice of the kind provided for under sub-article (7) shall reach the Minister not later than 90 days from the end of the period to which it relates. The Minister shall make a determination under this Article in respect of such a report not later than 90 days from the date of receipt of the said report and advice from the Authority.

(12) The Authority may, if it thinks fit, release a report prepared by it under sub-article (3) to registered undertakings, subject to any release not being effected earlier than 14 days from the date on which the said report was received by the Minister.

PART V

DETERMINATION OF PAYMENTS

11. (1) In this part of the Scheme a reference to:

"corrected former equalisation contribution" has the meaning assigned to it in sub-article (4);

"current period" has the meaning assigned to it in sub-article (3);

"first period" has the meaning assigned to it in sub-article (2);

"former equalisation contribution" has the meaning assigned to it in sub-article (5);

"former incorrect equalisation contribution" has the meaning assigned to it in sub-article (4);

"prior period adjustment" has the meaning assigned to it in sub-article (7);

"revised equalisation contribution" has the meaning assigned to it in sub-article (5).

(2) Calculations to determine payments under paragraph (a) of sub-section (4) of section 12 of the Act, shall be carried out by, or on behalf of the Authority, in respect of each period commencing with the period (referred to in this Article as the "first period") beginning on the risk equalisation commencement day.

(3) Following receipt of a return as specified under Article 9 from all returning undertakings, the Authority shall determine as part of its evaluation and analysis an equalisation contribution for each scheme undertaking for the period concerned (referred to in this Article as the "current period"), in accordance with the Second Schedule.

(4) The Authority shall determine in accordance with the Second Schedule for each scheme undertaking, for each previous period in respect of which a material calculation error has occurred and has not previously been corrected:

(a) the equalisation contribution for that period, based on the returns or the most recent previous data adjustments received and before making any adjustment for that calculation error, increased by the addition of interest at a compound annual rate equal to the prevailing European Central Bank marginal lending facility rate during the term between the last day of that period and the last day of the current period (referred to in this Article as the "former incorrect equalisation contribution"), and

(b) the equalisation contribution for that period, based on the information specified in paragraph (a) of this sub-article, but after making any adjustment for that calculation error, increased by the addition of interest at a compound annual rate equal to the prevailing European Central Bank marginal lending rate during the term between the last day of that period and the last day of the current period (referred to in this Article as the "corrected former equalisation contribution"),

provided that no such determination shall be made for any period before the first period.

(5) The Authority shall determine in accordance with the Second Schedule for each scheme undertaking, for each previous period in respect of which a new data adjustment has been submitted:

(a) the equalisation contribution for that period, based on the returns or the most recent previous data adjustments received and after making any adjustment for a calculation error for that period in accordance with sub-article (4)(b), increased by the addition of interest at a compound annual rate equal to the prevailing European Central Bank marginal lending

facility rate plus 5 percentage points during the term between the last day of that period and the last day of the current period (referred to in this Article as the "former equalisation contribution"), and

(b) the equalisation contribution for that period, based on the information specified in paragraph (a) of this sub-article, but incorporating any newly submitted data adjustment increased by the addition of interest at a compound annual rate equal to the prevailing European Central Bank marginal lending rate plus 5 percentage points during the term between the last day of that period and the last day of the current period (referred to in this Article as the "revised equalisation contribution"),

provided that no such determination shall be made for any period before the first period.

(6) The Authority shall have the power, in making a determination under this Article, to disregard:

(i) any data adjustment or calculation error, where it considers the amount involved would not be material in the context of the overall payments to or from the risk equalisation fund, or

(ii) any data adjustment, where it considers that a material lapse in time has occurred between the period or periods to which such adjustment may relate and the date on which the Authority becomes aware of same.

(7) The prior period adjustment for the current period for each scheme undertaking shall be the sum for each period in respect of which a new determination has been made under sub-articles (4) and (5) of values determined in accordance with the formula:

A – B + C -D

where: -

A is the corrected former equalisation contribution,

B is the former incorrect equalisation contribution,

C is the revised equalisation contribution, and

D is the former equalisation contribution.

(8) The contribution for the current period for each scheme undertaking shall be the sum of:

(a) that undertaking's equalisation contribution for the current period, and

(b) that undertaking's prior period adjustments, if any.

(9) If the contribution for a scheme undertaking is greater than zero then that amount shall be the payment by that undertaking to the Authority under paragraph (a)(i) of subsection (4) of section 12 of the Act. The Authority shall notify that undertaking accordingly, at the earliest practicable date, and the payment shall be made within 30 days of the date of such notification.

(10) Where a scheme undertaking fails to pay the amount due to the Authority in accordance with a notification under sub-article (9), that amount (or such part of that amount which from time to time remains unpaid) shall be increased by the addition of interest at a compound annual rate of the prevailing European Central Bank marginal lending rate plus 5 percentage points from the day upon which that amount first became payable until the day on which it is paid.

(11) If the contribution for a scheme undertaking is less than or equal to zero then the amount, if any, by which such contribution is less than zero shall be the payment to be made to that undertaking from the risk equalisation fund as determined by the Authority under paragraph (a)(ii) of subsection (4) of section 12 of the Act. The Authority shall notify that undertaking accordingly. Subject to sub-articles (12) and (13), any payment under this sub-article shall be issued by the Authority within 14 days of the date of receipt of payment in accordance with sub-article (9).

(12) In the circumstances specified in sub-article (10), the Authority may revise the amount and / or timing of the payment or payments determined under sub-article (11). The Authority shall, as soon as possible, notify scheme undertakings due to receive payments pursuant to sub-article (10) of any revisions made by it pursuant to this sub-article.

(13) In all circumstances, no liability or obligation shall attach to the Authority in relation to any disbursements pursuant to sub-article (11), unless an amount, or amounts, at least equal to the total of any such disbursements has been received by the Authority pursuant to sub-article (9).

(14) If the Authority becomes aware that a calculation error has occurred and it considers that the impact of the calculation error has had a material effect on payments to or from the risk equalisation fund it shall immediately notify the scheme undertakings and the Minister and, within 7 days of that notification, issue those parties with a report setting out the financial implications of the error, the arrangements decided by it to address those implications, the reasons the error occurred and the steps which have been taken to prevent a recurrence.

PART VI

ESTABLISHMENT AND OPERATION OF RISK EQUALISATION FUND

12. (1) Subject to Article 13, the Authority shall cause to be established and maintained a fund, which shall be known as the risk equalisation fund.

(2) (a) The risk equalisation fund shall be a bank account or bank accounts which shall be managed, maintained and controlled by the Authority.

(b) (i) Payments to be made to the Authority, under paragraph (a)(i) of subsection (4) of section 12 of the Act, shall be paid into the risk equalisation fund.

(ii) Payments to be made by the Authority, under paragraph (a)(ii) of subsection (4) of section 12 of the Act, shall be paid out of the risk equalisation fund.

(iii) Any interest accruing on moneys held in the fund shall be paid out in direct proportion to any payments which fall to be made from the fund pursuant to sub-article (ii).

(3) Payments made pursuant to sub-article (b)(i) are received by the Authority in trust for scheme undertakings due payments in accordance with the provisions of this Scheme. Such payments shall be administered and/or paid by the Authority to scheme undertakings in accordance with the provisions of this Scheme.

(4) The Authority shall arrange for the accounts of the risk equalisation fund to be audited by the Comptroller and Auditor General. A copy of these accounts and the report of the Comptroller and Auditor General thereon shall be furnished by the Authority to the Minister not later than 30 days following the receipt by the Authority of the said report.

PART VII

COMMENCEMENT OF RISK EQUALISATION PAYMENTS

13. (1) Articles 11 and 12 shall come into operation with effect from the day (to be known for the purposes of this Scheme as "the risk equalisation commencement day") determined by the Minister and notified in writing to the Authority and all registered undertakings, other than those to which a scheme does not apply pursuant to Article 4, provided that the day so determined by the Minister shall not precede the date of such determination.

(2) The exercise by the Minister of his/her powers under this Article shall be subject to the provisions of sub-articles (6) and (7) of Article 10.

PART VIII

SPECIFICATION OF PENAL REGULATIONS

14. Sub-articles (1), (3), (5), (6), (7), and (8) of Article 9 and sub-article (8) of Article 10 of the Scheme are hereby declared to be penal regulations for the purposes of subsection 1(b) of section 4 of the Act.

APPENDIX 2

FIRST SCHEDULE

Maximum Equalised Payments in Respect of Settled Claims Relating to Prescribed Health Services

1. The maximum equalised payments for prescribed health services provided by a publicly funded hospital or a private hospital to an insured person, which are not fixed price procedures, are:-

Payments in respect of:	**Maximum Prescribed Equalised Payment**
(a) Prescribed health services which are hospital in-patient services provided by a publicly-funded hospital while the insured person was maintained in accommodation other than private hospital accommodation.	The public hospital daily in-patient charges made under regulations pursuant to Section 53 of the Health Act 1970, and any other charges that may be payable, under that Act as amended.
(b) Prescribed health services which are hospital in-patient services provided by a publicly-funded hospital while the insured person was maintained in private hospital accommodation.	The amount of the charge payable under Section 55 of the Health Act 1970 plus the amount of the public hospital daily in-patient charges made under regulations pursuant to Section 53 of the Health Act 1970.
(c) Prescribed health services which are hospital in-patient services provided by a private hospital other than a private psychiatric hospital.	The lesser of: €550 for each in-patient day; or 100% of the charge made by the private hospital less €100 for each day during which the insured person was accommodated in a single room.

Payments in respect of:	**Maximum Prescribed Equalised Payment**
(d) Prescribed health services which are day-patient services provided by a publicly-funded hospital while the insured person was maintained in private hospital accommodation.	The amount of the charge payable under Section 55 of the Health Act, 1970 plus the amount of the public hospital daily in-patient charges made under regulations pursuant to Section 53 of the Health Act 1970.
(e) Prescribed health services which are day-patient services provided by a private hospital other than a private psychiatric hospital.	The lesser of: €550 for each day-patient day; or 100% of the charge made by the private hospital.
(f) Prescribed health services which are hospital in-patient services provided by a private psychiatric hospital.	€220 for each in-patient day.

2. The amount determined under this Schedule in respect of hospital charges relating to childbirth by means of a normal delivery shall not exceed €1,000.

3. In respect of fixed price procedures, the maximum equalised benefit shall be the lesser of, the amount paid or 90% of that specified in an agreement between the undertaking and the hospital as representing full settlement of all fees and charges payable for the particular services concerned.

4. The maximum equalised benefits in respect of prescribed health services provided by a hospital consultant shall be the amount paid by the undertaking for the particular services concerned.

5. In respect of prescribed health services provided outside of the State, the maximum equalised payments shall be the lesser of, the maximum prescribed equalised payment in accordance with the above Articles of this Schedule, or the amount paid by the undertaking for the particular services concerned in accordance with a health insurance contract.

SECOND SCHEDULE

RISK EQUALISATION CALCULATIONS

1. In this Schedule-

"commencement date", as it relates to an undertaking, shall be construed in accordance with section 12B of the Act;

"covered persons" means in relation to a scheme undertaking-

(a) insured persons who on the last day of a specific period were named in a health insurance contract effected by that scheme undertaking and who belonged on that day to a specified cell or combination of cells, or

(b) insured persons not already included under paragraph (a) of this definition who during a specific period were formerly named in a health insurance contract effected by that scheme undertaking and who, but for the cessation of their health insurance contract, would have belonged to that cell or those cells on the last day of that period;

"health status weight" and **"HSW"** means a percentage which on the risk equalisation commencement day shall be 0%, and thereafter shall be such a percentage as the Authority may from time to time determine for the purposes of calculations under this schedule, provided that the Authority shall not make such a determination unless:

(a) the Authority has observed from its analysis of returns carried out pursuant to Article 10(2) of Part IV that there are material differences in claims experience within prescribed age and gender cells as between scheme undertakings, and

(b) the Authority has carried out an investigation into the reasons for such material differences, and

(c) as a result of such investigation the Authority has concluded that the said material differences are wholly or substantially attributable to variations as between scheme undertakings in the health status of covered persons rather than in the respective efficiency levels of those undertakings;

and that accordingly the Authority considers that the making of such a determination is in the best overall interests of health insurance consumers, and provided that such percentage shall not in any event be less than 0% or exceed 50%.

2. Any change to the HSW determined by the Authority pursuant to Article 1 of this Schedule shall be notified by it to all registered undertakings, other than those to which a scheme does not apply pursuant to Article 4 of Part I, and shall not have effect earlier than 6 months after the date of the notification.

3. Where the denominator in any quotient specified herein is zero, the result of that calculation shall be deemed to be zero.

4. **Cell Definitions** (with respect to a specific period, each scheme undertaking and a specified cell) shall be as follows:

"cell insured population" and **"CIP"** means the average of the total number of insured persons in that cell on the first day of the first quarter of the period and on the first day of the second quarter of the period;

"cell equalised benefits" and **"CEB"** means the sum of all prescribed equalised benefits paid, in respect of settled claims which acquired that status during that period, to or on behalf of covered persons;

"cell claim value" and **"CCV"** means the sum of all in-patient and day-patient days, in respect of settled claims which acquired that status during that period, in

respect of covered persons but disregarding any such hospital stays which have been taken into account under a previous settled claim;

"cell equalised benefits average" and **"CEBA"** means an amount determined in accordance with the following formula:

$$\frac{\textbf{CEB}}{\textbf{CCV}}$$

"cell utilisation" and **"CU"** means an amount determined in accordance with the following formula:

$$\frac{\textbf{CCV}}{\textbf{CIP}}$$

5. **Scheme Undertakings Definitions** (with respect to a specific period and each scheme undertaking) shall be as follows:

"undertaking insured population" and **"UIP"** means the sum for all cells of

CIP

"undertaking equalised benefits" and **"UEB"** means the sum for all cells of

CEB

"undertaking adult lives" and **"UAL"** means the sum for all cells, other than the cell or cells which comprise the prescribed age band "age 17 and under", of

CIP

"undertaking child lives" and **"UCL"** means the sum for the cell or cells which comprise the prescribed age band "age 17 and under", of

CIP

"undertaking equivalent adult lives" and **"UEAL"** means a value determined in accordance with the formula:

$$\mathbf{UAL + \frac{UCL}{3}}$$

"undertaking equivalent adult ratio" and **"UEAR"** means a value determined in accordance with the formula:

$$\mathbf{\frac{UEAL}{UIP}}$$

6. **Market Specific Definitions** (with respect to a specific period) shall be as follows:

"market insured population(cell)" and **"MIP(Cell)"** means the sum, for all scheme undertakings for a specified cell, of

CIP

"market insured population (total)" and **"MIP (Total)"** means the sum, for all cells, of

MIP(Cell)

"market equalised benefits(cell)" and **"MEB(Cell)"** means the sum, for all scheme undertakings for a specified cell, of

CEB

"market equalised benefit(total)" and **"MEB(Total)"** means the sum, for all cells, of

MEB(Cell)

"market claim value" and **"MCV(Cell)"** means the sum, for all scheme undertakings for a specified cell, of

CCV

“market equalised benefits average” and **“MEBA(Cell)”** means an amount, for a specified cell, calculated in accordance with the formula:

$$\frac{\textbf{MEB(Cell)}}{\textbf{MCV(Cell)}}$$

“market utilisation” and **“MU(Cell)”** means a value, for a specified cell, calculated in accordance with the formula:

$$\frac{\textbf{MCV(Cell)}}{\textbf{MIP(Cell)}}$$

“market proportion” and **“MP(Cell)”** means a value calculated in accordance with the formula:

$$\frac{\textbf{MIP(Cell)}}{\textbf{MIP(Total)}}$$

“market equivalent adult lives” and **“MEAL”** means the sum for all scheme undertakings of

UEAL

“market equivalent adult ratio” and **“MEAR”** means a value determined in accordance with the formula:

$$\frac{\textbf{MEAL}}{\textbf{MIP(Total)}}$$

7. **Age, Gender and Health Status (AGHS) Calculations** shall be determined in accordance with the following provisions:

"cell standardised benefits – age, gender and health status basis" and **"CSBAGHS"** with respect to a specific period, each scheme undertaking and a specified cell, means an amount calculated in accordance with the formula:

CEBA x MP(Cell) x MU(Cell) x UIP

Except where **CCV** is less than 20 for that cell, in which case, **CSBAGHS** shall be calculated in accordance with the formula:

MEBA(Cell) x MP(Cell) x MU(Cell) x UIP

"undertaking standardised benefits - age, gender and health status basis – first calculation " and **"USBAGHS1"** with respect to a specific period and each scheme undertaking means the sum for all cells of

CSBAGHS

"undertaking standardised benefits - age, gender and health status basis – second calculation" and **"USBAGHS2"** with respect to a specific period and each scheme undertaking means a value determined in accordance with the formula:

$$\text{USBAGHS1} \times \frac{\text{UEAR}}{\text{MEAR}}$$

"market standardised benefits - age, gender and health status basis" and **"MSBAGHS"** with respect to a specific period means the sum, for all scheme undertakings, of

USBAGHS2

"undertaking standardised benefits - age, gender and health status basis" and **"USBAGHS"** with respect to a specific period and each scheme undertaking means an amount determined in accordance with the formula:

$$\mathbf{USBAGHS2 \times \frac{MEB(Total)}{MSBAGHS}}$$

"undertaking equalisation adjustment – age, gender and health status basis" and **"UEAAGHS" "** with respect to a specific period and each scheme undertaking shall be determined in accordance with the formula:

USBAGHS – UEB

8. **Age and Gender (AG) Calculations** shall be determined in accordance with the following provisions:

"cell standardised benefits – age and gender basis" and **"CSBAG"** with respect to a specific period, each scheme undertaking and a specified cell means an amount calculated in accordance with the formula:

$$\mathbf{\frac{CEB}{CIP} \times UIP \times MP(Cell)}$$

Except where **CEB** is less than €5,000, or if **CIP** is less than 20, in which case **CSBAG** shall be calculated in accordance with the following formula:

$$\mathbf{\frac{MEB(Cell)}{MIP(Cell)} \times UIP \times MP(Cell)}$$

"undertaking standardised benefits – age and gender basis – first calculation" and **"USBAG1"** with respect to a specific period and each scheme undertaking means the sum for all cells of

CSBAG

"undertaking standardised benefits – age and gender basis – second calculation" and **"USBAG2"** with respect to a specific period and each scheme undertaking means a value determined in accordance with the formula:

$$\text{USBAG1} \times \frac{\text{UEAR}}{\text{MEAR}}$$

"market standardised benefits – age and gender basis" and **"MSBAG"** with respect to a specific period means the sum, for all scheme undertakings, of

USBAG2

"undertaking standardised benefits – age and gender basis" and **"USBAG"** with respect to a specific period and each scheme undertaking means an amount determined in accordance with the formula:

$$\text{USBAG2} \times \frac{\text{MEB(Total)}}{\text{MSBAG}}$$

"undertaking equalisation adjustment – age and gender" and **"UEAAG"** with respect to a specific period and each scheme undertaking means an amount determined in accordance with the formula:

USBAG – UEB

9. **Determination of Market Equalisation Percentage and Equalisation Contributions** shall be in accordance with the following provisions:

"undertaking equalisation adjustment" and **"UEA"** with respect to a specific period and each scheme undertaking means an amount determined in accordance with the following formula:

HSW x UEAAGHS + (100% - HSW) x UEAAG

"undertaking phased positive equalisation adjustment" and **"UPPEA"** with respect to a specific period and each scheme undertaking means for all scheme

undertakings in respect of which the determined **UEA** is greater than zero an amount determined in accordance with the following formula:

UEA x P

where **P** is a value determined in accordance with the following table

Total number of periods from the risk equalisation commencement day up to the current period inclusive	**Value**
Not more than 2	0.5
3 or more	1.00

provided that in the case of a scheme undertaking which had satisfied the conditions specified in subsection (1) of section 12B of the Act, a value for **P** determined in accordance with the following table should be substituted for the above, if lower,

Total number of periods (including part periods) from the commencement day of that undertaking up to the current period inclusive	**Value**
6 or less	0
7	T/365
8	0.5
9 or more	1.00

where "T" is the number of days from, and including, the day that undertaking first becomes a scheme undertaking to the end of the period in which it acquired that status.

"market positive equalisation adjustments" and **"MPEA"** (with respect to a specific period) means the sum, for all scheme undertakings in respect of which the determined **UEA** is greater than zero of

UEA

"market positive phased equalisation adjustments" and **"MPPEA"** (with respect to a specific period) means the sum, for all scheme undertakings in respect of which the determined **UEA** is greater than zero of

UPPEA

"undertaking phased negative equalisation adjustment" and **"UPNEA" (**with respect to a specific period and each scheme undertaking) means, for all scheme undertakings in respect of which the determined **UEA** is less than or equal to zero an amount determined in accordance with the following formula:

$$\text{UEA} \times \frac{\text{MPPEA}}{\text{MPEA}}$$

"equalisation contribution" (with respect to a specific period and each scheme undertaking) means:

(a) **UPPEA** for all scheme undertakings in respect of which the determined **UEA** is greater than zero and / or

(b) **UPNEA** for all scheme undertakings in respect of which the determined **UEA** is less than or equal to zero

"market equalisation percentage" with respect to a specific period shall be a percentage determined in accordance with the following formula:

$$\frac{\text{MPEA} \times 100}{\text{MEB(Total)}}$$

THIRD SCHEDULE **Form No. 1**

Return to the Health Insurance Authority, pursuant to Article 9 of the Risk Equalisation Scheme, 2003.

Return for the Period Ending……

PART 1 OF RETURN

Data for First Quarter of Period:

Gender: Female

Returning undertaking: .....

Cell	Number of insured persons on first day of that quarter	Cell equalised benefits for that quarter (€000s)	Cell claim value for that quarter
Age 17 and under			
Age 18 to age 29			
Age 30 to age 39			
Age 40 to age 49			
Age 50 to age 59			
Age 60 to age 69			
Age 70 to Age 79			
Age 80 and over			
All cells for that gender combined			

PART 1 OF RETURN (Continued)

Data for First Quarter of Period:

Gender: Male

Returning undertaking: .....

Cell	Number of insured persons on first day of that quarter	Cell equalised benefits for that quarter (€000s)	Cell claim value for that quarter
Age 17 and under			
Age 18 to age 29			
Age 30 to age 39			
Age 40 to age 49			
Age 50 to age 59			
Age 60 to age 69			
Age 70 to Age 79			
Age 80 and over			
All cells for that gender combined			
All cells for both genders combined			

PART 2 OF RETURN

Data for Second Quarter of Period:

Gender: Female

Returning undertaking: .....

Cell	Number of insured persons on first day of that quarter	Cell equalised benefits for that quarter (€000s)	Cell claim value for that quarter
Age 17 and under			
Age 18 to age 29			
Age 30 to age 39			
Age 40 to age 49			
Age 50 to age 59			
Age 60 to age 69			
Age 70 to Age 79			
Age 80 and over			
All cells for that gender combined			

PART 2 OF RETURN (Continued)

Data for Second Quarter of Period:

Gender: Male

Returning undertaking: .....

Cell	Number of insured persons on first day of that quarter	Cell equalised benefits for that quarter (€000s)	Cell claim value for that quarter
Age 17 and under			
Age 18 to age 29			
Age 30 to age 39			
Age 40 to age 49			
Age 50 to age 59			
Age 60 to age 69			
Age 70 to Age 79			
Age 80 and over			
All cells for that gender combined			
All cells for both genders combined			

Form No. 1

Return for the Period Ending ……. as confirmed by:

Name: _____ Name: _____

*Position: _____ Position: _____

Signature:_____ Signature:_____

Date:_____ Date:_____

*One of the signatories to be the Managing Director, Chief Executive Officer, Company Secretary, Board Member, Trustee, or a person of similar status.

Given under my Official Seal,
this 26th day of June, 2003.

L.S.

Micheál Martin
Minister for Health and Children

EXPLANATORY NOTE

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

This scheme provides for the operation of risk equalisation arrangements between health insurance undertakings. It provides for them to make statistical returns relating to risk equalisation and includes arrangements for the exemption, of a permanent or limited nature, of undertakings from the operation of the scheme. It sets out details for the operation of the scheme, including the role of The Health Insurance Authority in relation to any commencement of risk equalisation and the calculation of any transfers arising. It also provides for the establishment and maintenance of a risk equalisation fund by the Authority.

Copies may be obtained from the Government Publications Office, Sun Alliance House, Molesworth Street, Dublin 2, or by mail order from Government Publications, Postal Trade Section, 5 St Stephens' Green, Dublin 2. Fax: 01 647 6843.

DEPARTMENT OF HEALTH AND CHILDREN
JUNE 2003