



STATUTORY INSTRUMENTS.

S.I. No. 436 of 2009

NURSING HOMES SUPPORT SCHEME (COLLECTION AND
RECOVERY OF REPAYABLE AMOUNTS) REGULATIONS 2009

(Prn. A9/1492)

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I, MARY HARNEY, Minister for Health and Children, in exercise of the powers conferred on me by section 36(6) of the Nursing Homes Support Scheme Act 2009 (No. 15 of 2009), having consulted with the Revenue Commissioners and with the consent of the Minister for Finance hereby make the following regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the Nursing Homes Support Scheme (Collection and Recovery of Repayable Amounts) Regulations 2009.

(2) These Regulations shall come into operation on the 2nd day of November 2009.

Interpretation

2. (1) In these Regulations, except where the context otherwise requires—

“period of delay”, in relation to a repayable amount due and payable, means the period during which the repayable amount, or any part of that amount, remains unpaid;

“the Act” means the Nursing Homes Support Scheme Act 2009 (No. 15 of 2009);

“the date the repayable amount becomes due and payable” means the date of the occurrence of the relevant event or deferred relevant event, as the case may be, which gives rise to the repayable amount becoming due and payable;

“relevant accountable person” has the meaning assigned to it by section 26(16) of the Act;

“repayable amount” has the meaning assigned to it by section 26(1) of the Act.

Payment

3. (1) The relevant accountable person shall, on receipt of a notice from the Executive in accordance with section 26(1) of the Act, pay the repayable amount specified in the notice to the Revenue Commissioners within the period of time specified in paragraph (2).

(2) The period of time referred to in paragraph (1) shall be—

(a) where the repayable amount arises from—

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd November, 2009.*

- (i) a relevant event which is a relevant event of a kind referred to in paragraph (a) of the definition of relevant event in section 19(1) of the Act, or
- (ii) a deferred relevant event which is a deferred relevant event of a kind referred to in paragraph (a) of the definition of deferred relevant event in section 20(6) of the Act, or of a kind referred to in paragraph (c) of that definition insofar as it relates to the death of the connected person,

the period of 12 months from the date of the relevant event or deferred relevant event, as the case may be,

and

(b) where the repayable amount arises from—

- (i) a relevant event which is a relevant event of a kind referred to in paragraph (b), (c) or (d) of the definition of relevant event in section 19(1) of the Act, or
- (ii) a deferred relevant event which is a deferred relevant event of a kind referred to in paragraph (b), (c) — other than the death of the connected person — or (d) of the definition of deferred relevant event in section 20(6) of the Act,

the period of 6 months from the date of the relevant event or deferred relevant event, as the case may be.

(3) Where the Executive has notified the Revenue Commissioners in accordance with section 26(3) of the Act and a payment in respect of the repayable amount so notified has not been received by the Commissioners from, or on behalf of, the relevant accountable person within the period of time specified in paragraph (2)(a) or (b), as the case may be, the Commissioners may by notice in writing require the relevant accountable person to pay the repayable amount and any interest on that amount (determined in accordance with Regulation 4) specified in the notice within a period of 7 days from the date of the notice.

(4) Where a repayable amount is paid by, or on behalf of, the relevant accountable person the Revenue Commissioners shall furnish the relevant accountable person with a receipt in respect of that payment (and any interest on that payment, if due) and shall notify the Executive that the repayable amount has been repaid.

(5) The payment referred to in paragraphs (1) and (3) shall be accompanied by a return in such form as may be specified by the Revenue Commissioners from time to time.

Interest on overdue repayable amounts.

4. (1) Subject to paragraph (3), a repayable amount, or any part of a repayable amount, shall carry interest from the date the repayable amount becomes

due and payable until payment of the amount, or that part of the amount, and the amount of that interest shall be calculated in accordance with paragraph (2).

(2) The amount of interest to be carried by a repayable amount, or any part of a repayable amount, referred to in paragraph (1) shall be determined by the formula—

$$R \times D \times 0.0219\%$$

where—

R is the repayable amount, or any part of that amount, which remains unpaid, and

D is the number of days (including part of a day) forming the period of delay.

(3) Interest shall not be payable on a repayable amount which arises from a relevant event or a deferred relevant event where the repayable amount is paid within the period of time specified in Regulation 3(2)(a) or (b), as the case may be.

(4) Interest payable under this Regulation shall be payable without deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any of the purposes of the Tax Acts.

(5) Interest determined in accordance with this Regulation shall be payable and recoverable in the same manner as if it were part of the repayable amount.

Recovery

5. (1) Without prejudice to any other mode of recovery, the provisions of any enactment relating to the recovery of income tax and the provisions of any rule of court so relating shall, with any necessary modifications, apply to the recovery of any repayable amount (including any interest thereon) as they apply in relation to the recovery of income tax and for this purpose the repayable amount and any interest thereon shall be treated as if it were an amount of income tax.

(2) In particular and without prejudice to the generality of paragraph (1), that paragraph applies the provisions of sections 960H, 960I(1), 960K, 960L, 960N and 1002 of the Taxes Consolidation Act 1997.

(3) In proceedings instituted for the recovery of any repayable amount, a certificate signed by—

(a) an officer of the Executive which certifies that the Executive had advanced monies by way of ancillary State support to a person and had given notice of the repayable amount and particulars of how it was calculated to the person against whom the proceedings were instituted, or

- (b) an officer of the Revenue Commissioners which certifies that a stated repayable amount had been notified to the Commissioners by the Executive as being due and payable by the person against whom the proceedings were instituted and that a notice demanding payment of the repayable amount under Regulation 3(3) had been duly issued to that person

shall be sufficient evidence, until the contrary is proved, of those matters.

(4) A certificate certifying the matters at paragraph (3)(a) or (b), and purporting to be signed by an officer of the Executive or an officer of the Revenue Commissioners, as the case may be, may be tendered in evidence without proof and shall be deemed, until the contrary is proved, to have been duly signed by the person concerned.

(5) If a dispute relating to a certificate referred to in paragraph (3) arises during proceedings for the recovery of any repayable amount, the judge may adjourn the proceedings to allow the officer of the Executive concerned or the officer of the Revenue Commissioners concerned, as the case may be, to attend and give oral evidence in the proceedings and for any register, file or other record relating to the repayable amount in the possession of the Executive or the Revenue Commissioners to be produced and put in evidence in the proceedings.

(6) Subject to this Regulation, the rules of the court concerned for the time being applicable to civil proceedings shall apply to proceedings by virtue of this Regulation.

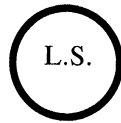
Exchange of Information

6. The Revenue Commissioners shall furnish to the Executive information relating to the collection and recovery of repayable amounts and any interest accruing on those amounts.

Nomination of Officers.

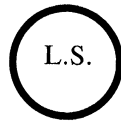
7. The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by the Revenue Commissioners, and references in these Regulations to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so nominated.

The Minister for Finance consents to the making of the foregoing regulations.



GIVEN under the Official Seal of the Minister for Finance this
29 October 2009.

BRIAN LENIHAN,
Minister for Finance.



GIVEN under my Official Seal this
30 October 2009.

MARY HARNEY,
Minister for Health and Children.

EXPLANATORY NOTE

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

These Regulations provide for the collection and recovery of repayable amounts by the Revenue Commissioners, as agents of the Health Service Executive (HSE), in accordance with the provisions of the Nursing Homes Support Scheme Act 2009.

The Regulations provide that the relevant accountable person must pay the repayable amount to the Revenue Commissioners within certain timeframes. Where the repayable amount falls due for payment as a result of the death of a person, it must be repaid within 12 months of the date of death. In all other cases (e.g. if the person in care sells or transfers the property during their lifetime), it must be repaid within 6 months of the date of sale or transfer.

Where payment is not made within these timeframes, the Regulations provide for interest to accrue on the outstanding sum back to the date of death or date of sale or transfer, as the case may be. The Regulations also provide that, in the event of non-payment within the relevant timeframes, the Revenue Commissioners may issue a 7 day final demand notice to the relevant accountable person and, if payment does not ensue, may commence recovery procedures.

The Regulations provide for certain presumptions in the event of legal proceedings being taken by the Revenue Commissioners for recovery of a repayable amount, for the giving of oral evidence by an officer of the Commissioners or an officer of the HSE in the event of a dispute arising in relation to those presumptions and for records to be produced and put forward as evidence if necessary.

Finally the Regulations provide for the Revenue Commissioners to issue receipts to relevant accountable persons in respect of the payment of repayable amounts and to provide the HSE with information on the collection and recovery process.

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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
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or through any bookseller.

€2.54

ISBN 978-1-4064-4942-6



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