



# Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

## PART 6

### MISCELLANEOUS

#### *Infection with hepatitis C as a result of NHS treatment etc.*

#### **28 Payments to certain persons infected with hepatitis C as a result of NHS treatment etc.**

(1) The Scottish Ministers may make a scheme for the making of payments by them, or out of money provided by them, to, or in respect of—

(a) persons who—

(i) before 1st September 1991, were treated anywhere in the United Kingdom under the National Health Service by way of the receipt of blood, tissue or a blood product; <sup>F1</sup> and]

(ii) as a result of that treatment, became infected with the hepatitis C virus; <sup>F2</sup> ...

<sup>F3</sup>(iii) .....

(b) persons who—

(i) became infected with the hepatitis C virus by transmission of the virus by means specified in the scheme from a person who before 1st September 1991 was treated anywhere in the United Kingdom under the National Health Service by way of the receipt of blood, tissue or a blood product and as a result of that treatment became infected with the hepatitis C virus; <sup>F4</sup> and]

(ii) were at the time of transmission in a relationship mentioned in subsection (2) with the person from whom the virus was transmitted; <sup>F5</sup> ...

<sup>F6</sup>(iii) .....

[<sup>F7</sup>(c) dependants of persons mentioned in paragraph (a) or (b).]

(2) The relationships referred to in subsection (1)(b)(ii) are—

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- (a) spouse or civil partner;
- (b) person who was living with the person from whom the virus was transmitted as husband or wife or in a relationship which had the characteristics of the relationship between civil partners (or if the person from whom the virus was transmitted was in hospital immediately before death, had been so living when that person was admitted to hospital);
- (c) other cohabitant (whether or not of the same sex as the person from whom the virus was transmitted);
- (d) where the person from whom the virus was transmitted was a mother, a son or daughter of the mother;
- (e) such other relationship as the scheme may specify; and the scheme may specify or elaborate the meaning of relationship for this purpose.

[<sup>F8</sup>(2A) In subsection (1)(c), “dependant”, in relation to a person mentioned in subsection (1) (a) or (b) (the “infected person”), means—

- (a) a spouse or civil partner of the infected person;
- (b) a person living with the infected person as husband or wife or in a relationship which has the characteristics of the relationship between civil partners (or if the infected person was in hospital immediately before death, had been so living when the infected person was admitted to hospital);
- (c) such other persons as the scheme may specify; and the scheme may specify or elaborate the meaning of dependant for this purpose.]

(3) A scheme under this section must—

- (a) provide that the questions of whether—
  - (i) a person became infected with the hepatitis C virus as a result of treatment such as is mentioned in subsection (1)(a)(i) before the date mentioned there; and
  - (ii) a person became infected with the virus by transmission of it by means specified in the scheme from a person who became infected as mentioned in sub-paragraph (i),

are to be determined on the balance of probabilities;

- (b) provide that a person is not eligible for the making of a payment under the scheme unless, when the claim for the payment is made or, in the case of a claim made in respect of a dead person [<sup>F9</sup>falling within subsection (1)(a) or (b)], when the person died either—
  - (i) the person's sole or main residence is or was in Scotland; or
  - (ii) the person's sole or main residence is or was outside the United Kingdom but, immediately before acquiring such sole or main residence, the person's sole or main residence is or was in Scotland;
- (c) provide for the procedure to be followed in relation to claims under the scheme (including the time within which claims must be made and matters relating to the provision of information) and the determination of such claims;
- (d) provide for a right of appeal against a decision refusing a claim under the scheme; and
- (e) provide that a claim may be made in respect of a dead person [<sup>F10</sup>falling within subsection (1)(a) or (b)], without such a claim having to have been made prior to that person's death.

(4) Without prejudice to the generality of subsection (1), a scheme under this section may—

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- (a) specify conditions for eligibility for the making of a claim by another person under the scheme in respect of a person falling within subsection (1) <sup>F11</sup> (a) or (b) ] who has died without having made a claim under the scheme;
  - (b) specify conditions for eligibility for the making of a payment under the scheme (and may specify different conditions in relation to different payments);
  - (c) provide that the making of a claim, or the receipt of a payment, under the scheme is not to prejudice the right of any person to institute or carry on proceedings in relation to the matter which is the subject of the claim or payment;
  - (d) appoint a person (other than a Minister of the Crown) to manage the scheme on behalf of the Scottish Ministers;
  - (e) confer functions on the Scottish Ministers or any person appointed under paragraph (d);
  - (f) provide for any function so conferred on the Scottish Ministers to be carried out on their behalf by any person appointed under paragraph (d); and
  - (g) make transitional, transitory or saving provision.
- (5) Provision such as is mentioned in subsection (4)(d) or (f) does not affect the responsibility of the Scottish Ministers for the management of the scheme or the carrying out of the functions.
- (6) The Scottish Ministers may revoke or amend a scheme under this section.
- (7) The Scottish Ministers must publish a scheme under this section in such manner as they consider appropriate.

#### Textual Amendments

- F1** Word in s. 28(1)(a)(i) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(a)(i), 26(2) (with ss. 18(3), 20)
- F2** Word in s. 28(1)(a)(ii) repealed (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(a)(ii), 26(2) (with ss. 18(3), 20)
- F3** S. 28(1)(a)(iii) repealed (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(a)(iii), 26(2) (with ss. 18(3), 20)
- F4** Word in s. 28(1)(b)(i) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(b)(i), 26(2) (with ss. 18(3), 20)
- F5** Word in s. 28(1)(b)(ii) repealed (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(b)(ii), 26(2) (with ss. 18(3), 20)
- F6** S. 28(1)(b)(iii) repealed (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(b)(iii), 26(2) (with ss. 18(3), 20)
- F7** S. 28(1)(c) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(2)(c), 26(2) (with ss. 18(3), 20)
- F8** S. 28(2A) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(3), 26(2) (with ss. 18(3), 20)
- F9** Words in s. 28(3)(b) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(4)(a), 26(2) (with ss. 18(3), 20)
- F10** Words in s. 28(3)(e) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(4)(b), 26(2) (with ss. 18(3), 20)
- F11** Words in s. 28(4)(a) inserted (31.3.2011) by Patient Rights (Scotland) Act 2011 (asp 5), ss. 22(5), 26(2) (with ss. 18(3), 20)

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#### **Commencement Information**

**II** S. 28 in force at 17.10.2005 by [S.S.I. 2005/492](#), art. 3(a), **Sch. 1**

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