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STATUTORY INSTRUMENTS

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**2006 No. 1944 (N.I. 13)**

**NORTHERN IRELAND**

**The Recovery of Health Services  
Charges (Northern Ireland) Order 2006**

*Made - - - - 19th July 2006  
Coming into operation in accordance with Article 1(2)  
and (3)*

At the Court at Buckingham Palace, the 19th day of July 2006

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Recovery of Health Services Charges (Northern Ireland) Order 2006.

(2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Department of Health, Social Services and Public Safety may by order appoint.

(3) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the 1972 Order” means the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#);

“the 1998 Order” means the [Social Security \(Northern Ireland\) Order 1998 \(NI 10\)](#);

“compensation payment” has the meaning given in Article 3;

“the Department” means the Department for Social Development;

“health services ambulance services” means ambulance services provided under Article 10(1) of the 1972 Order;

“health services hospital” means a hospital which provides health services;

“health services treatment” has the meaning given in Article 3(7);

“injured person” has the meaning given in Article 3(1);

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department of Health, Social Services and Public Safety.

(3) Except where any provision of this Order otherwise provides, any word or expression to which a meaning is assigned by Article 2(2) of the 1972 Order has the same meaning in this Order as in that Order.

### *Health services charges*

#### **Liability to pay health services charges**

3.—(1) This Article applies if—

- (a) a person makes a compensation payment to or in respect of any other person (the “injured person”) in consequence of any injury, whether physical or psychological, suffered by the injured person, and
- (b) the injured person has—
  - (i) received health services treatment at a health services hospital as a result of the injury,
  - (ii) been provided with health services ambulance services as a result of the injury for the purpose of taking him to a health services hospital for health services treatment (unless he was dead on arrival at that hospital), or
  - (iii) received treatment as mentioned in head (i) and been provided with ambulance services as mentioned in head (ii).

(2) The person making the compensation payment is liable to pay the relevant health services charges in respect of the treatment or ambulance services to the Department.

(3) “Compensation payment” means a payment, including a payment in money’s worth, made—

- (a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury, or
- (b) in pursuance of a compensation scheme for motor accidents,

but does not include a payment mentioned in Schedule 1.

(4) Paragraph (1)(a) applies—

- (a) to a payment made—
  - (i) voluntarily, or in pursuance of a court order or an agreement, or otherwise, and
  - (ii) in the United Kingdom or elsewhere, and
- (b) if more than one payment is made, to each payment.

- (5) “Injury” does not include any disease.
- (6) Nothing in paragraph (5) prevents this Order from applying to—
- (a) treatment received as a result of any disease suffered by the injured person, or
  - (b) ambulance services provided as a result of any disease suffered by him,
- if the disease in question is attributable to the injury suffered by the injured person (and accordingly that treatment is received or those services are provided as a result of the injury).
- (7) “Health services treatment” means any treatment (including any examination of the injured person) other than—
- (a) treatment provided by virtue of Article 31 of the 1972 Order or paragraph 14 of Schedule 3 to the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#) (accommodation and services for private patients),
  - (b) treatment provided at a health services hospital by virtue of Article 5(4) of the 1972 Order (permission for use of health services accommodation or facilities in private practice), or
  - (c) treatment provided by virtue of—
    - (i) Article 15B, 56 or 57 of the 1972 Order (primary medical services), or
    - (ii) Article 61 of the 1972 Order (general dental services).
- (8) “Relevant health services charges” means the amount specified in a certificate of health services charges—
- (a) issued under this Order, in respect of the injured person, to the person making the compensation payment, and
  - (b) in force.
- (9) “Compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons.
- (10) Regulations may amend Schedule 1 by omitting or modifying any payment for the time being specified in that Schedule.
- (11) This Article applies in relation to any injury which occurs on or after the date on which this Article comes into operation.
- (12) For the purposes of this Order, it is irrelevant whether a compensation payment is made with or without an admission of liability.

#### *Certificates of health services charges*

#### **Applications for certificates of health services charges**

- 4.—(1) Before a person makes a compensation payment in consequence of any injury suffered by an injured person, he may apply for a certificate of health services charges (in this Order referred to as “a certificate”) to the Department.
- (2) If the Department receives an application under paragraph (1), it shall arrange for a certificate to be issued as soon as is reasonably practicable.
- (3) A certificate may provide that it is to remain in force—
- (a) until a specified date,
  - (b) until the occurrence of a specified event, or
  - (c) indefinitely.
- (4) A person may apply under paragraph (1) for a fresh certificate from time to time.

(5) Paragraph (2) does not require the Department to arrange for a fresh certificate to be issued to a person applying under paragraph (4) if, when the application is received, a certificate issued to the applicant in respect of the injured person is still in force; but the Department may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate.

(6) If a certificate expires, the Department may arrange for a fresh certificate to be issued without an application having to be made.

(7) In the circumstances mentioned in paragraph (8), a person who has made a compensation payment in consequence of an injury suffered by an injured person shall apply for a certificate to the Department.

(8) The circumstances are that—

(a) at the time the payment is made by the person—

(i) no certificate has been issued to him in respect of the injured person, or

(ii) if such a certificate has been issued to him, it is no longer in force, and

(b) no application for a certificate has been made by him during the prescribed period ending immediately before the day on which the compensation payment is made.

(9) An application for a certificate shall be made in the prescribed manner and, in the case of an application under paragraph (7), within the prescribed period.

(10) On receiving an application under paragraph (7), the Department shall arrange for a certificate to be issued as soon as is reasonably practicable.

### **Information contained in certificates**

5.—(1) A certificate shall specify the amount for which the person to whom it is issued is liable under Article 3(2).

(2) The amount to be specified is to be that set out in, or determined in accordance with, regulations, reduced if applicable in accordance with paragraph (3) or regulations under paragraph (10).

(3) If a certificate relates to a claim made by or on behalf of an injured person—

(a) in respect of which a court in Northern Ireland has ordered a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),

(b) in respect of which a court in England and Wales or Scotland has ordered a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),

(c) in respect of which a court in a country other than Northern Ireland, England and Wales or Scotland has ordered a reduction of damages under any provision of the law of that country which appears to the Department to correspond to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948,

(d) in respect of which an officer of a court in Northern Ireland or England and Wales has entered or sealed an agreed judgment or order which specifies—

(i) that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and

(ii) the amount or proportion by which they are to be so reduced,

(e) in the case of which the parties to any resulting action before a court in Scotland have executed a joint minute which specifies—

(i) that the action has been settled extra-judicially, and

(ii) the matters mentioned in sub-paragraph (d)(i) and (ii), or

(f) in respect of which a document has been made under any provision of the law of a country other than Northern Ireland, England and Wales or Scotland—

(i) which appears to the Department to correspond to an agreed judgment or order entered or sealed by an officer of a court in Northern Ireland, and

(ii) which specifies the matters mentioned in sub-paragraph (d)(i) and (ii),

the amount specified in the certificate is to be that which would be so specified apart from this paragraph, reduced by the same proportion as the reduction of damages.

(4) If a certificate relates to an injured person who has not received health services treatment at a health services hospital or been provided with health services ambulance services as a result of the injury, it shall indicate that no amount is payable to the Department by reference to that certificate.

(5) Regulations under paragraph (2) may, in particular, provide—

- (a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum,
- (b) for different amounts to be specified in respect of different circumstances or areas,
- (c) for cases in which an injured person receives treatment at two or more health services hospitals,
- (d) for cases in which an injured person receives treatment at one or more health services hospitals and is provided with health services ambulance services,
- (e) for cases in which liability under Article 3(2) is to be apportioned between two or more persons making compensation payments to or in respect of the same injured person in consequence of the same injury,
- (f) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review under Article 8 or an appeal under Article 9 or 11,
- (g) for any matter requiring determination under or in consequence of the regulations to be determined by the Department,

and in the case of sub-paragraph (e) may make such provision by modifying this Order.

(6) Any reference in paragraph (5)(a) or (b) to any amount specified in a certificate is to the amount which would be so specified apart from paragraph (3) or regulations under paragraph (10).

(7) Regulations under paragraph (2) which provide for cases mentioned in paragraph (5)(e) may (among other things) provide in the case of each compensator for—

- (a) determining, or re-determining, the amount for which he is liable under Article 3(2),
- (b) giving credit for amounts already paid, and
- (c) the payment by any person of any balance or the recovery from any person of any excess.

(8) Regulations under paragraph (2) which provide for cases mentioned in paragraph (5)(f) may (among other things) provide in the case of any compensator for the matters mentioned in sub-paragraphs (b) and (c) of paragraph (7).

(9) For the purposes of paragraph (10), a claim made by or on behalf of an injured person is a qualifying claim if—

- (a) it does not fall within paragraph (3) or within any other description of claim specified in regulations, and
- (b) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question.

(10) Regulations may make provision as to the circumstances in which the amount specified in a certificate relating to a qualifying claim is to be that which would be so specified apart from the regulations, reduced by the same proportion as the reduction of damages.

(11) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount specified in the certificate has been determined as may be prescribed, if he applies to the Department for those particulars.

(12) Regulations under paragraph (2) may be made so as to apply to any certificate issued after the time the regulations come into operation, other than one relating to a compensation payment made before that time.

### *Recovery of health services charges*

#### **Payment of health services charges**

6.—(1) If the certificate by reference to which an amount payable under Article 3(2) is determined is issued before the settlement date, that amount shall be paid before the end of the period of 14 days beginning with and including the settlement date.

(2) If the certificate by reference to which an amount payable under Article 3(2) is determined is issued on or after the settlement date, that amount shall be paid before the end of the period of 14 days beginning with and including the day on which the certificate is issued.

(3) “Settlement date” means the date on which the compensation payment is made.

(4) This Article is subject to Article 7(2).

#### **Recovery of health services charges**

7.—(1) This Article applies if a person has made a compensation payment and either—

- (a) paragraph (7) of Article 4 applies but he has not applied for a certificate as required by that paragraph, or
- (b) he has not made payment, in full, of any amount due under Article 3(2) by the end of the period allowed under Article 6.

(2) The Department may—

- (a) in a case within paragraph (1)(a), issue the person who made the compensation payment with a certificate, and
- (b) in a case within paragraph (1)(b), issue him with a copy of the certificate or (if more than one has been issued) the most recent one,

and, in either case, issue him with a demand that payment of any amount due under Article 3(2) be made immediately.

(3) The Department may recover the amount for which a demand for payment is made under paragraph (2) from the person who made the compensation payment.

(4) Any amount recoverable shall, if the county court so orders, be enforceable as if it were payable under an order of that court.

(5) A document which states that it is a record of the amount recoverable under paragraph (3) is conclusive evidence that the amount is so recoverable if it is signed by a person authorised to do so by the Department.

(6) For the purposes of paragraph (5), a document purporting to be signed by a person authorised to do so by the Department is to be treated as so signed unless the contrary is proved.

## *Review and appeal*

### **Review of certificates**

8.—(1) The Department shall review a certificate issued by it if the certificate relates to a claim made by or on behalf of an injured person—

- (a) in respect of which, after the certificate is issued, a court in Northern Ireland orders a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),
- (b) in respect of which, after the certificate is issued, a court in England and Wales or Scotland orders a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
- (c) in respect of which, after the certificate is issued, a court in a country other than Northern Ireland, England and Wales or Scotland orders a reduction of damages under any provision of the law of that country which appears to the Department to correspond to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948,
- (d) in respect of which, after the certificate is issued, an officer of a court in Northern Ireland or England and Wales enters or seals an agreed judgment or order which specifies—
  - (i) that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and
  - (ii) the amount or proportion by which they are to be so reduced,
- (e) in the case of which, after the certificate is issued, the parties to any resulting action before a court in Scotland execute a joint minute which specifies—
  - (i) that the action has been settled extra-judicially, and
  - (ii) the matters mentioned in sub-paragraph (d)(i) and (ii), or
- (f) in respect of which, after the certificate is issued, a document is made under any provision of the law of a country other than Northern Ireland, England and Wales or Scotland—
  - (i) which appears to the Department to correspond to an agreed judgment or order entered or sealed by an officer of a court in Northern Ireland, and
  - (ii) which specifies the matters mentioned in sub-paragraph (d)(i) and (ii),and notification of the order, judgment, minute or document has been given to the Department in the prescribed manner.

(2) Regulations may make provision as to the circumstances in which the Department shall review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim (as defined in Article 5(9)).

(3) The Department may review a certificate issued by it—

- (a) either within the prescribed period or in prescribed cases or circumstances, and
- (b) either on application made for the purpose or on the Department's initiative.

(4) On a review under this Article, the Department may—

- (a) confirm the certificate,
- (b) (subject to paragraph (5)) issue a fresh certificate containing such variations as it considers appropriate, or
- (c) revoke the certificate.

(5) The Department may not vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to the Department that the variation is required as a result of the

Department having been supplied with incorrect or insufficient information by the person to whom the certificate is issued.

### **Appeal against a certificate or a waiver decision**

9.—(1) An appeal against a certificate may be made by the person to whom the certificate was issued on one or more of the following grounds—

- (a) that an amount specified in the certificate is incorrect,
- (b) that an amount so specified takes into account—
  - (i) treatment which is not health services treatment received by the injured person, as a result of his injury, at a health services hospital,
  - (ii) ambulance services which are not health services ambulance services provided to the injured person as a result of his injury, or
  - (iii) treatment as mentioned in head (i) and ambulance services as mentioned in head (ii),
- (c) that the payment on the basis of which the certificate was issued is not a compensation payment.

(2) No appeal may be made until—

- (a) the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of, and
- (b) payment of the amount specified in the certificate has been made to the Department, subject to paragraph (4) and Articles 10(5) and 11(5).

(3) For the purposes of paragraph (2)(a), if an award of damages in respect of a claim has been made under—

- (a) paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982 (c. 53),
- (b) section 32A(2)(a) of the Supreme Court Act 1981 (c. 54) or section 12(2)(a) of the Administration of Justice Act 1982, or
- (c) section 51(2)(a) of the County Courts Act 1984 (c. 28),

(orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

(4) The Department may, on an application by the person to whom the certificate was issued, waive the requirement in paragraph (2)(b) that payment of the amount specified in the certificate be made before making an appeal.

(5) The Department may only grant a waiver if it appears to it that payment of the amount specified in the certificate would cause exceptional financial hardship.

(6) An appeal against a decision of the Department on an application under paragraph (4) (referred to in this Article and Articles 10 and 11 as a “waiver decision”) may be made by the person to whom the certificate was issued.

(7) Regulations may make provision—

- (a) as to the manner in which, and the time within which, an appeal against a certificate or waiver decision may be made,
- (b) as to the procedure to be followed if an appeal against a certificate or waiver decision is made,
- (c) as to the circumstances in which appeals may be consolidated, and
- (d) for the purpose of enabling an appeal against a certificate to be treated as an application for a review under Article 8.



### **Appeal tribunals**

- 10.**—(1) The Department shall refer to an appeal tribunal an appeal against—
- (a) a certificate, or
  - (b) a waiver decision.
- (2) In determining an appeal against a certificate, the tribunal shall take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury in question.
- (3) On an appeal against a certificate, the tribunal may—
- (a) confirm the amount specified in the certificate,
  - (b) specify any variations which are to be made on the issue of a fresh certificate under paragraph (4), or
  - (c) declare that the certificate is to be revoked.
- (4) When the Department has received the decision of the tribunal on an appeal against a certificate, the Department shall in accordance with that decision—
- (a) confirm the certificate,
  - (b) issue a fresh certificate, or
  - (c) revoke the certificate.
- (5) On an appeal against a waiver decision, the tribunal may—
- (a) confirm the decision, or
  - (b) waive the requirement in question.
- (6) Regulations under Article 9 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under paragraph (1).
- (7) Regulations may apply any provision contained in the 1998 Order in relation to appeals under this Article to an appeal tribunal, but subject to such modifications as may be prescribed by the regulations.
- (8) In this Article and Article 11 “appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part II of the 1998 Order.

### **Appeal to Social Security Commissioner**

- 11.**—(1) An appeal may be made to a Commissioner against any decision of an appeal tribunal under Article 10 on the ground that the decision was erroneous in point of law.
- (2) An appeal under this Article may be made by—
- (a) the Department, or
  - (b) the person to whom the certificate was issued.
- (3) If an appeal is made under this Article, paragraphs (7) to (13) of Article 15 of the 1998 Order apply to the appeal as they apply to an appeal under that Article (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in Article 10(8)).
- (4) In a case in which paragraph (7) or (8)(b) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (3) of Article 10, paragraphs (2) to (4) of that Article apply as they apply to an appeal determined on a reference under paragraph (1)(a) of that Article.
- (5) In a case in which paragraph (7) or (8)(b) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (5) of Article 10, the appeal tribunal may—

- (a) confirm the waiver decision, or
- (b) waive the requirement in question.

(6) In a case in which paragraph (8)(a) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (3) of Article 10, paragraph (4) of that Article applies as if the references to the decision of the tribunal on an appeal against a certificate were references to the decision of the Commissioner on an appeal under this Article.

(7) In this Article “Commissioner” has the same meaning as in section 167(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

### *Information*

#### **Provision of information**

**12.**—(1) If compensation is sought in consequence of any injury suffered by an injured person, such information with respect to the circumstances of the case as may be prescribed shall be given by the following persons to the Department—

- (a) the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced,
- (b) the injured person or, if the injured person has died, his personal representative,
- (c) anyone not within sub-paragraph (a) who is, or is alleged to be, liable to any extent in respect of the injury,
- (d) if the claim is not made by the injured person, the person by whom it is made,
- (e) anyone acting on behalf of the person within any of sub-paragraphs (b) to (d),
- (f) the responsible body of each health services hospital at which the injured person has received health services treatment as a result of his injury,
- (g) any ambulance trust which provided health services ambulance services as a result of his injury.

(2) A person who is required to give information under this Article shall do so—

- (a) in the prescribed manner, and
- (b) within the prescribed period.

(3) Regulations under this Article may, in particular, require the provision of information about any health services treatment which an injured person has received at a health services hospital and any health services ambulance services provided to the injured person.

(4) In this Article—

“ambulance trust” means an HSS trust;

“responsible body”, in relation to a health services hospital, means—

- (a) in the case of a hospital vested in an HSS trust, the trust; and
- (b) in any other case, the body responsible for the management of the hospital.

#### **Use of information held by the Department etc.**

**13.**—(1) Paragraph (2) applies to information which is held—

- (a) by the Department, or
- (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under the [Social Security \(Recovery of Benefits\) \(Northern Ireland\) Order 1997 \(NI 12\)](#).

- (2) The information may—
  - (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under this Order, and
  - (b) be supplied to, or to a person providing services to, the Department for use for those purposes.
- (3) Paragraph (4) applies to information which is held—
  - (a) by the Department, or
  - (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under this Order.

- (4) The information may—
  - (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, and
  - (b) be supplied to, or to a person providing services to, the Department for use for those purposes.

#### *Payments to hospitals or ambulance trusts*

#### **Payment of health services charges to hospitals or ambulance trusts**

**14.—**(1) If the Department receives a payment of relevant health services charges under Article 3(2)—

- (a) if the payment relates only to health services treatment received at a health services hospital, the Department shall pay the amount received to the responsible body of the health services hospital,
- (b) if the payment relates only to the provision of health services ambulance services the Department shall pay the amount received to the relevant ambulance trust,
- (c) if the payment relates to health services treatment received at more than one health services hospital, the Department shall divide the amount received among the responsible bodies of the hospitals concerned in such manner as it considers appropriate,
- (d) if the payment relates to health services treatment received at one or more health services hospitals and the provision of health services ambulance services, the Department shall divide the amount received among the responsible body or bodies of the hospital or hospitals and any relevant ambulance trusts concerned in such manner as it considers appropriate.

(2) Paragraph (1) does not apply to any amount received by the Department under Article 3(2) which it is required to repay in accordance with regulations under Article 5(2).

- (3) Regulations under this Article may—
  - (a) make provision for the manner in which and intervals at which any payments due under this Article are to be made,
  - (b) make provision for cases where the responsible body of the health services hospital or relevant ambulance trust concerned has ceased to exist (including provision modifying this Order).

(4) Any amounts received under this Article by the responsible bodies of the health services hospitals concerned shall be used for the purposes of providing goods and services for the benefit of patients receiving health services treatment at those hospitals.

(5) Any amounts received under this Article by the relevant ambulance trusts concerned shall be used for the purposes of health services ambulance services.

(6) In this Article—

“relevant ambulance trust” means the HSS trust which is designated by the Department for the purposes of this Article in relation to the health services hospital to which the injured person was taken for treatment;

“responsible body” has the meaning given in Article 12(4).

### *Miscellaneous and general*

#### **Regulations governing lump sums, periodical payments etc.**

15.—(1) Regulations may make provision (including provision modifying this Order)—

(a) for cases to which Article 3(2) applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of the same injury,

(b) for cases to which Article 3(2) applies in which an agreement is entered into for the making of—

(i) periodical compensation payments (whether of an income or capital nature), or

(ii) periodical compensation payments and lump sum compensation payments,

(c) for cases in which the compensation payment to which Article 3(2) applies is an interim payment of damages which a court orders to be repaid.

(2) Regulations made by virtue of paragraph (1)(a) may (among other things) provide—

(a) for giving credit for amounts already paid, and

(b) for the payment by any person of any balance or the recovery from any person of any excess.

(3) Regulations may make provision modifying the application of this Order in relation to cases in which a payment into court is made and, in particular, may provide—

(a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment,

(b) for application for, and issue of, certificates.

#### **Liability of insurers**

16.—(1) If a compensation payment is made in a case where—

(a) a person is liable to any extent in respect of the injury, and

(b) the liability is covered to any extent by a policy of insurance,

the policy is also to be treated as covering any liability of that person under Article 3(2).

(2) Liability imposed on the insurer by paragraph (1) cannot be excluded or restricted.

(3) For that purpose excluding or restricting liability includes—

(a) making the liability or its enforcement subject to restrictive or onerous conditions,

(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or

(c) excluding or restricting rules of evidence or procedure.

(4) Regulations may in prescribed cases limit the amount of the liability imposed on the insurer by paragraph (1).

(5) This Article applies in relation to policies of insurance issued before (as well as those issued after) the date on which it comes into operation.

(6) References in this Article to policies of insurance and their issue include references to contracts of insurance and their making.

### **Power to apply this Order to treatment at non-health services hospitals**

**17.**—(1) Regulations may make provision for this Order to apply, with such modifications as may be prescribed, if—

(a) a person makes a compensation payment as mentioned in Article 3(1)(a), but

(b) the person to or in respect of whom the payment is made has—

(i) received treatment as a result of the injury at a qualifying hospital under a health services arrangement,

(ii) been provided with health services ambulance services as a result of the injury for the purpose of taking him to a qualifying hospital for treatment under a health services arrangement (unless he was dead on arrival at that hospital), or

(iii) received treatment as mentioned in head (i) and been provided with health services ambulance services as mentioned in head (ii),

(subject to paragraph (2)).

(2) Paragraph (1)(b) does not apply where the person to or in respect of whom the payment is made receives, or is taken to a hospital for, treatment which would be provided as mentioned in subparagraph (a) or (c) of Article 3(7) if it were provided at a health services hospital.

(3) In paragraph (1), “health services arrangement” means an arrangement or agreement between

—

(a) the hospital in question or a body responsible for it, and

(b) a Health and Social Services Board or an HSS trust.

(4) In this Article “qualifying hospital” means a hospital which is not a health services hospital.

### **The Crown**

**18.** This Order binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

### **Regulations and orders**

**19.**—(1) Regulations under Article 3(10) or the first regulations under Article 5(2) may not be made unless a draft has been laid before and approved by resolution of the Assembly.

(2) Any other regulations or orders made by the Department of Health, Social Services and Public Safety under this Order (except an order under Article 1) shall be subject to negative resolution.

(3) Regulations or orders under this Order may make—

(a) supplementary, incidental or consequential provision,

(b) transitory, transitional or saving provision.

### **Supplementary and consequential provision**

**20.**—(1) The Department of Health, Social Services and Public Safety may by order make—

- (a) such supplementary, incidental or consequential provision, or
- (b) such transitory, transitional or saving provision,

as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Order.

(2) The provision which may be made under paragraph (1) includes provision amending or repealing any statutory provision, instrument or document.

### **Repeals and transitional provisions**

**21.**—(1) The statutory provisions mentioned in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

(2) The repeal by this Order of Part II of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) does not affect the operation of that Part in relation to any injury which occurs before the date on which this Article comes into operation.

*A.K. Galloway*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 3.

#### RECOVERY OF HEALTH SERVICES CHARGES: EXEMPTED PAYMENTS

1. Any payment made to or for the injured person under—
  - (a) Article 14 of the [Criminal Justice \(Northern Ireland\) Order 1994 \(NI 15\)](#) (compensation orders against convicted persons),
  - (b) section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (corresponding provision in relation to England and Wales), or
  - (c) section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (corresponding provision in relation to Scotland).
2. Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of—
  - (a) the injury suffered by the injured person, or
  - (b) any connected injury suffered by another.
3. Any payment made out of property held for the purposes of a prescribed trust.
- 4.—(1) Any payment made to the injured person by an insurer under the terms of any contract of insurance entered into between the injured person and the insurer before the occurrence of the injury in question.
  - (2) In sub-paragraph (1), “insurer” means—
    - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance, or
    - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance.
  - (3) Sub-paragraph (2) shall be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000,
    - (b) any relevant order under that section, and
    - (c) Schedule 2 to that Act.
5. Any payment which apart from this paragraph would be made by—
  - (a) the responsible body of the health services hospital to whom the payment would subsequently be passed under Article 14,
  - (b) the relevant ambulance trust to whom the payment would subsequently be passed under that Article.
6. Any payment to the extent that it is made—
  - (a) in consequence of an action under the [Fatal Accidents \(Northern Ireland\) Order 1977 \(NI 18\)](#),

- (b) in consequence of an action under the Fatal Accidents Act 1976 (c. 30), or
- (c) in circumstances where, had an action been brought, it would have been brought under that Order or Act.
7. Any payment to the extent that it is made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976 (c. 13).
8. Any payment of a prescribed description, either generally or in such circumstances as may be prescribed.

## SCHEDULE 2

Article 21.

## REPEALS

Short Title	Extent of repeal
The Road Traffic (Northern Ireland) Order 1981 (NI 1).	In Article 101(2)— (a) the words “or Part II of the Health and Personal Social Services Act (Northern Ireland) 2001”, and (b) in sub-paragraph (b), the words from “or under section 23” to “traffic casualties”.
The Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3).	Part II.

**EXPLANATORY NOTE***(This note is not part of the Order)*

This Order amends the law relating to the recovery of health services charges from persons making compensation payments.