

# **RECOVERY OF HEALTH SERVICES CHARGES (NORTHERN IRELAND) ORDER 2006**

**S.I. 2006 1944**

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## **EXPLANATORY MEMORANDUM**

### **INTRODUCTION**

1. The Recovery of Health Services Charges (Northern Ireland) Order 2006 (“the Order”) was made on 19<sup>th</sup> July 2006.
2. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.
3. The provisions in the Order are similar to those in Great Britain contained in Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (c.3) (“2003 GB Act”), as amended by the Health Act 2006 (c.28).

### **BACKGROUND AND POLICY OBJECTIVES**

4. The Order deals with the recovery of health services charges. It provides for the health services in Northern Ireland to recover hospital treatment and/or ambulance costs where people receive compensation for injuries. The principle involved is that the wrongdoer in any case which results in compensation, should meet the costs of his or her wrongdoing rather than for the health services and taxpayer to subsidise them. It would also encourage people to take active steps to reduce the risk of causing injury to third parties. The Order represents an expansion, to include all cases of injury, of the current scheme for road traffic accident (“RTA”) cases as set out in Part II of the Health and Personal Social Services Act (Northern Ireland) 2001 (c.3) (“2001 Act”). The costs would be recovered from the compensator and not the patient receiving the health services treatment.
5. Although the provisions follow very closely those of the 2001 Act, there are some changes to the way the scheme will operate. Four are of particular note. (i) The provision of ambulance services will be brought within the scope of the scheme. (ii) Findings of contributory negligence will be taken into account in calculating the amount of charge recoverable. (iii) Compensators wishing to appeal against a certificate of charges will be able to seek to have the requirement that any charges due must be paid before an appeal can be made waived on the grounds of exceptional financial hardship. (iv) An increase in the amount shown in a certificate of charges following a review will only be made where the compensator has supplied incorrect or insufficient information.

### **CONSULTATION**

6. The Department undertook a public consultation on the proposed policy in autumn 2003. The overall level of response to the consultation was low. The responses received showed a large majority of interests (about 75% of responders) in favour of the proposed scheme. The Proposal was issued for consultation in July 2004 on the same basis as

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the above document. The level of response was very low and none of the comments received had tangible effect on the content of the Order.

#### **MAIN ELEMENTS OF THE ORDER**

7. In essence the Order, which consists of 21 Articles and 2 Schedules, has only one main element – the recovery of health services charges in cases where a person is injured and subsequently receives compensation in respect of the injury.

#### **COMMENTARY ON ARTICLES**

8. Comments are not always given where the wording is self explanatory.
9. For the purposes of the Order, **Article 2** defines “Department” as meaning the Department for Social Development (“DSD”) which, through the Social Security Agency’s Compensation Recovery Unit (“CRU”), will be responsible for operating the recovery scheme.
10. **Article 3** deals with the liability to pay health services (“HS”) charges and sets out the circumstances in which HS costs can be recovered. It provides that any person who makes a compensation payment in consequence of an injury will also be liable to pay HS charges for consequent treatment received by the injured person at a HS hospital and/or for the provision of HS ambulance services to the person. Article 3 also defines compensation payment. The definition is broad and covers payments made by the person liable, or alleged to be liable, for the injury or by his representative such as an insurance company. The definition catches not only a final payment of damages but also an interim payment or a payment of costs only. It includes payments made by the Motor Insurers’ Bureau, which operates schemes to make compensation payments where drivers are uninsured or untraceable.
11. **Article 3** also introduces **Schedule 1**, which lists a number of payments that are not to count as compensation payments (e.g. compensation orders made by criminal courts or payments made by prescribed trusts, for instance a trust set up to compensate haemophiliacs infected with HIV from blood products), and provides that the scheme will not apply where the compensator is the same hospital as the one which would receive HS charges. The Article excludes from the definition of HS treatment, private treatment provided at HS hospitals or primary medical services or general dental services.
12. **Article 4** deals with applications for certificates of HS charges (“certificate”). It provides that a person (e.g. an insurance company) may apply to the DSD (i.e. CRU) for a certificate before a compensation payment is made to the injured person. A compensator must, however, apply for a certificate if, at the time of making a compensation payment, he has not already been issued with a certificate or any previously issued certificate has expired. These obligations do not arise if the compensator has applied for a certificate within a period before making payment set out in regulations. A certificate issued by the DSD can remain in force until a specified date, which might be appropriate where there was ongoing treatment; until the occurrence of a specific event (e.g. any further admission to hospital); or indefinitely.
13. **Article 5** deals with the information to be included in certificates including the amount, determined in accordance with regulations, that the compensator must pay in HS charges, or advising that a nil certificate is appropriate. It also provides that where the damages awarded to an injured person have been reduced to reflect a finding of contributory negligence, either made by a court process or through some form of alternative dispute resolution (e.g. mediation or arbitration), the amount due in HS charges will also be reduced by the same proportion.
14. **Article 5** sets out particular matters which may be covered by regulations, including: a cap on the overall amount payable; different amounts for different circumstances (e.g.

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out-patient or in-patient treatment and/or ambulance services); or dealing with cases where a fresh certificate is issued or a certificate revoked as a result of a review or appeal. The amounts to be specified on certificates will be before any reduction for contributory negligence, meaning that any such reduction will be applied to the amounts set in regulations and not to the full treatment costs which may have exceeded the prescribed maximum recoverable.

15. **Article 6** sets out the time limits for payment of HS charges. **Article 7** provides for the recovery of unpaid HS charges. If the person paying compensation either has not applied for a certificate or has not paid the amount due under a certificate, the DSD can issue a new or duplicate certificate and a demand for immediate payment, and take action to enforce payment. **Article 8** provides for the internal review of certificates. The DSD must review a certificate if, after it has been issued, a finding of contributory negligence is made. This reflects the fact that such a finding reduces the liability for HS charges as provided for in Article 5.
16. **Articles 9 and 10** provide for appeals against certificates of charges and waiver decisions to an independent body. No appeal may be made until the claim to which the compensation payment relates has been finally disposed of and the amounts set out in the certificate have been paid. Compensators, however, will be able to apply for the requirement for prior payment to be waived and the DSD will grant such a waiver where it appears to it that requiring payment would cause exceptional financial hardship. Compensators will have a right of appeal against a waiver decision using the same mechanism as for an appeal against a certificate, i.e. for the case to be heard by an appeal tribunal set up as part of the Unified Appeal Tribunal procedure introduced by the Social Security (Northern Ireland) Order 1998. Article 10 includes the powers available to a tribunal on an appeal and requires the DSD to act in accordance with any tribunal decision. **Article 11** provides for appeals to the Social Security Commissioner on point of law.
17. The system for recovery of HS charges relies on the exchange of information by the various parties involved in the chain of events from accident to payment of compensation. **Article 12** provides that a person against whom a compensation claim is made and others must provide the DSD with such information as is prescribed. **Article 13** allows information obtained for the purposes of the benefit recovery scheme, as set out in the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, to be used for the purposes of the scheme relating to the recovery of HS charges and vice versa.
18. **Article 14** requires the DSD to pay HS charges which it has recovered, other than overpayments which it has to repay in contributory negligence cases, to the body responsible for the hospital which provided the treatment and/or the trust running the ambulance service. Liability for payment of HS charges is triggered by any payment of compensation, whether it is a single payment, an interim payment or a second or subsequent payment. **Article 15** enables regulations to be made as to the application of the scheme to particular types of such payments.
19. **Article 16** provides that where an insurance policy covers, to any extent, a compensation payment made by an insured person in consequence of an injury, that policy will also cover any HS costs for which the insured person is liable in respect of that injury and that this cover cannot be restricted or excluded. Regulations may be made limiting an insurer's liability in certain circumstances, e.g. to enable a reduction in the HS costs payable in cases where an insurer has only covered a proportion of the total compensation due as a result of a cap on the amount payable under the insurance policy.
20. **Article 17** enables regulations to apply this Order to cases where treatment has been provided at a non-HS hospital under an arrangement with a Health and Social Services Board or an HSS Trust and also where, in such cases, the injured person has been provided with health services ambulance services to take him/her to the hospital.

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**COMMENCEMENT**

21. It is intended that the legislation will come into effect from 29 January 2007.