



2001 CHAPTER 3

PART III

HEALTH AND PERSONAL SOCIAL SERVICES – GENERAL

Evasion of charges, fraud etc.

Evasion of charges etc.

48.—(1) In Schedule 15 to the principal Order (charges in respect of certain services and related matters) for paragraphs 5 to 8 there shall be substituted—

“**5.—**(1) Where goods or services are provided under this Order and either—

- (a) any charge payable by any person under this Order in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
- (b) any payment under this Order is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in sub-paragraph (2) is recoverable summarily as a debt from the person in question by the responsible authority.

(2) That amount—

- (a) in a case within sub-paragraph (1)(a), is the amount of the charge or (where it has been reduced) reduction;
- (b) in a case within sub-paragraph (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under paragraph 3 or this paragraph to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

(4) For the purposes of this paragraph, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this paragraph and paragraph 6, “responsible authority” means—

- (a) in relation to the recovery of any charge under paragraph 3 in respect of the provision of goods or services under this Order, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this paragraph of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;
- (c) in a case within sub-paragraph (1)(b), the person who made the payment.

(6) But the Department may by directions provide for—

- (a) the functions of any responsible authority of recovering any charges under this Order in respect of the provision of goods or services under this Order;
- (b) the functions of any responsible authority under this paragraph and paragraph 6,

to be exercised on behalf of the authority by another health services body.

6.—(1) Regulations may provide that, where a person fails to pay—

- (a) any amount recoverable from him under paragraph 3 in respect of the provision of goods or services under this Order; or
- (b) any amount recoverable from him under paragraph 5,

a notice (referred to in this paragraph as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this paragraph as a penalty charge) of an amount determined in accordance with the regulations.

(2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

- (a) £100;
- (b) the amount referred to in sub-paragraph (1)(a) or (b) multiplied by 5.

(3) The Department may by order provide for sub-paragraph (2) to have effect as if, for the sum specified in head (a) or the multiplier specified in head (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.

(4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(5) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(6) Any sum payable under the regulations (including the amount referred to in sub-paragraph (1)(a) or (b)) may be recovered by the responsible authority summarily as a debt.

(7) But a person is not liable by virtue of a penalty notice—

- (a) to pay at any time so much of any amount referred to in sub-paragraph (1) (a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) No order shall be made under sub-paragraph (3) unless a draft has been laid before, and approved by resolution of the Assembly.

7.—(1) A person is guilty of an offence if he does any act mentioned in paragraph (2) with a view to securing for himself or another—

- (a) the evasion of the whole or part of any charge under this Order in respect of the provision of goods or services under this Order;
- (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment;
- (c) a payment under this Order (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in sub-paragraph (1) are—

- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation; or
- (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this paragraph before a magistrates' court if he is authorised to do so by the Department.

(5) Proceedings for an offence under this paragraph may be begun within either of the following periods—

- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge;
- (b) the period of 12 months beginning with the commission of the offence.

(6) For the purposes of sub-paragraph (5), a certificate purporting to be signed by or on behalf of the Department as to the date on which such evidence as is mentioned in head (a) of that sub-paragraph came to its knowledge is conclusive evidence of that date.

(7) Where, in respect of any charge or payment under this Order—

- (a) a person is convicted of an offence under this paragraph; or
- (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under paragraph 6,

he shall not, in a case within head (a), be liable to pay any such penalty charge or further sum by way of penalty or, in a case within head (b), be convicted of such an offence.

(8) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.”.

(2) Paragraphs 5 to 7 of Schedule 15 to the principal Order apply to charges which may be made and recovered under Article 20 of the [Health Services \(Primary Care\) \(Northern Ireland\) Order 1997 \(NI 7\)](#) as they apply to charges under the principal Order which may be recovered under paragraph 3 of that Schedule.