

Draft Regulations laid before the Scottish Parliament under section 195(7) of the Health and Social Care (Community Health and Standards) Act 2003, for approval by resolution of the Scottish Parliament

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

NATIONAL HEALTH SERVICE

**The Personal Injuries (NHS Charges)
(Amounts) (Scotland) Regulations 2006**

Made - - - - 2006

Coming into force - - 29th January 2007

The Scottish Ministers, in exercise of the powers conferred by sections 153(2), (5), (7) and (8), 163(1), 168 and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003(1) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which (being the first Regulations made under section 153(2) of that Act) has, in accordance with section 195(7) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 and shall come into force on 29th January 2007.

(2) These Regulations extend to Scotland only.

(3) In these Regulations—

“the Act” means the Health and Social Care (Community Health and Standards) Act 2003;

“certificate” means a certificate issued under section 151;

“hospital” means a health service hospital within the meaning of section 168;

“injury” means any injury which occurs on or after 29th January 2007; and

“relevant NHS body” has the meaning given to it in regulation 8(4).

(4) A reference in these Regulations to a numbered section is a reference to that section of the Act.

(1) 2003 c. 43 (“the 2003 Act”). By section 167(1), the powers are exercisable in relation to Scotland by the Scottish Ministers. See section 168 of the 2003 Act for the definition of prescribed.

Amount of NHS charges

2.—(1) Subject to the following paragraphs of this regulation and regulation 3, a certificate shall, for the purpose of section 153(2), specify—

- (a) the sum of £159 for each occasion on which, as a result of an injury, the injured person was provided with NHS ambulance services⁽²⁾ for the purpose of taking the injured person to a hospital for NHS treatment⁽³⁾; and
- (b) where the injured person received NHS treatment at a hospital in respect of the injury, either—
 - (i) if the person was not admitted to hospital, the sum of £505; or
 - (ii) if the injured person was admitted to hospital, the sum of £620 for each day or part day of admission.

(2) For the purposes of paragraph (1)(a), the reference to taking an injured person to a hospital includes taking that person from one hospital to another.

(3) Where the injured person was admitted to hospital on one day and discharged on another day, the day of discharge shall be disregarded for the purposes of paragraph (1)(b)(ii).

(4) The amount which a certificate may specify under paragraph (1)(a) or (1)(b), or both, must not exceed £37,100 (“the maximum”).

(5) Where—

- (a) amounts fall to be specified under both paragraph (1)(a) and paragraph (1)(b); and
- (b) the aggregate of those amounts would exceed the maximum,

the amount to be specified under paragraph (1)(b) is to be reduced by the difference between the maximum and the aggregate of those amounts.

Amount of NHS charges: further provision

3.—(1) This paragraph applies where a person liable to pay relevant NHS charges⁽⁴⁾—

- (a) makes a compensation payment in the form of a lump sum (an “earlier payment”); and
- (b) subsequently makes another such payment in respect of the same injury (a “later payment”).

(2) Where paragraph (1) applies, the amount, for the purpose of section 153(2), to be specified in the certificate in respect of the later payment shall be the amount determined under regulation 2 reduced by the amount paid in satisfaction of any liability to pay relevant NHS charges in connection with the earlier payment.

(3) Where the person to whom the certificate is to be issued pursuant to paragraph (2) is a person whose liability to pay the relevant NHS charges has been determined or re-determined under regulation 5(4), the certificate shall, in addition to the amounts to be specified under the foregoing provisions of this regulation, specify the amount of relevant NHS charges that the person is liable to pay in accordance with that determination or re-determination.

Treatment to be taken into account

4.—(1) A certificate issued under section 151(2) shall only take into account treatment received, or ambulance services provided, before the date the certificate is issued.

(2) See section 168 of the 2003 Act for the definition of NHS ambulance services.

(3) See section 150(7) of the 2003 Act for the definition of NHS treatment.

(4) See section 150(10) of the 2003 Act for the definition of relevant NHS charges.

(2) A certificate issued under section 151(10) shall only take into account treatment received, or ambulance services provided, before the settlement date⁽⁵⁾.

Apportionment of liability to pay NHS charges

- 5.—(1) This regulation applies where each of two or more persons (“the compensators”)—
- (a) has made a compensation payment⁽⁶⁾ to or in respect of a person in consequence of any injury suffered by that person; or
 - (b) is, or is alleged to be, liable to any extent in respect of the injury.
- (2) This paragraph applies where—
- (a) one of the compensators applies for a certificate under section 151 and, at the time of making the application, requests that the liability to pay the relevant NHS charges be apportioned between the compensators; and
 - (b) before they issue the certificate, the Scottish Ministers receive sufficient evidence to enable them to determine how that liability is to be apportioned.
- (3) This paragraph applies where—
- (a) a compensator to whom a certificate has been issued, requests that the liability to pay the relevant NHS charges be apportioned between the compensators; and
 - (b) the Scottish Ministers receive sufficient evidence to enable them to determine how that liability is to be apportioned between the compensators.
- (4) Where paragraph (2) or (3) applies—
- (a) the Scottish Ministers shall determine or, in the case of a compensator to whom a certificate has been issued, re-determine, the liability of each compensator to pay the relevant NHS charges;
 - (b) for the purposes of sub-paragraph (a), the Scottish Ministers shall apportion between the compensators the amount of relevant NHS charges that would be payable if there was only one compensator;
 - (c) in the case of a compensator to whom a certificate has not been issued, the certificate when issued to the compensator shall specify the liability to pay the relevant NHS charges and the share of that liability that has been apportioned to that compensator;
 - (d) in the case of a compensator to whom a certificate has been issued, when the Scottish Ministers re-determine that person’s liability to pay the relevant NHS charges, subsections (5) and (7) of section 156 (review of certificates) shall apply as if the re determination were a review under that section.

Adjustment of amounts where certificates are issued by the Scottish Ministers and the Secretary of State

- 6.—(1) This paragraph applies where—
- (a) in accordance with—
 - (i) a certificate issued by the Scottish Ministers; and
 - (ii) a certificate issued by the Secretary of State,
- a person is liable to pay relevant NHS charges in respect of the same injured person in consequence of the same injury; and

(5) See section 154(3) of the 2003 Act for the definition of settlement date.

(6) See section 150(3) of the 2003 Act for the definition of compensation payment.

- (b) when aggregated, the amounts specified in the certificates exceed the maximum mentioned in regulation 2(4).
- (2) Where paragraph (1) applies, the Scottish Ministers may adjust any amount specified in the certificate issued by them having regard to—
 - (a) the amounts that may be specified in the certificate in accordance with regulation 2(4) and (5); and
 - (b) any amount specified in the certificate issued by the Secretary of State and any adjustment to that amount that the Secretary of State notifies the Scottish Ministers that the Secretary of State proposes to make.
- (3) The Scottish Ministers shall notify the Secretary of State of any adjustment that they propose to make in accordance with paragraph (2).

Overpayments by compensators

- 7.—(1) This paragraph applies where—
- (a) either—
 - (i) the Scottish Ministers have made a re-determination of the relevant NHS charges in accordance with regulation 5(4), or
 - (ii) the Scottish Ministers have adjusted the amount of the relevant NHS charges in accordance with regulation 6, or
 - (iii) as a result of a review under or by virtue of section 156, or an appeal under section 157 or 159, a fresh certificate has been issued or a certificate has been revoked, and
 - (b) in consequence of the re-determination, adjustment, review or appeal it appears that the amount of any relevant NHS charges paid by any person is more than the amount that the person ought to have paid.
- (2) Where paragraph (1) applies—
- (a) except where the Scottish Ministers require a payment to be made under sub-paragraph b(iii), they shall pay to the person who paid the relevant NHS charges the difference between the amount that has been paid and the amount that ought to have been paid; and
 - (b) where the Scottish Ministers have (under section 162) paid the amount received to an ambulance trust or responsible body(7), the Scottish Ministers may—
 - (i) deduct the difference between the amount that has been paid under section 162 and the amount that ought to have been paid from any future payment due to that trust or body under that section;
 - (ii) require that trust or body to pay the difference to them; or
 - (iii) require that trust or body to pay the difference to the person who paid the relevant NHS charges.

Underpayments by compensators

- 8.—(1) This paragraph applies where—
- (a) either—
 - (i) the Scottish Ministers have made a re-determination of the relevant NHS charges in accordance with regulation 5(4); or

(7) See section 160(4) of the 2003 Act for the definitions of ambulance trust and responsible body.

- (ii) as a result of a review under or by virtue of section 156, or an appeal under section 157 or 159, a fresh certificate has been issued or a certificate has been revoked; and
 - (b) in consequence of the re-determination, review or appeal it appears that the amount of any relevant NHS charges paid by any person is less than the amount that the person ought to have paid.
- (2) Where paragraph (1) applies—
- (a) the person who paid the relevant NHS charges shall pay to the Scottish Ministers the difference between the amount that has been paid and the amount that ought to have been paid; and
 - (b) the Scottish Ministers shall pay that difference to the relevant NHS body.
- (3) Where any payment to be made under paragraph (2)(a) relates to—
- (a) treatment received at more than one hospital; or
 - (b) treatment received at one or more hospitals and the provision of NHS ambulance services,
- the Scottish Ministers shall divide the difference among the relevant NHS bodies concerned in such manner as they consider appropriate.
- (4) For the purposes of this regulation, the relevant NHS body is the relevant ambulance trust⁽⁸⁾ or responsible body⁽⁹⁾ to which the Scottish Ministers are required by section 162(1) to pay the amount of any relevant NHS charges paid to them.

Provision of statements to person paying NHS charges in cases of overpayments and underpayments

9. Where the Scottish Ministers make a payment under regulation 7(2)(a), or require a payment under regulation 7(2)(b)(iii) or a payment falls to be made under regulation 8(2)(a), they shall send a statement to the person who paid the relevant NHS charges showing—
- (a) the name and address of the injured person to whom the statement relates;
 - (b) the total amount already paid to the Scottish Ministers;
 - (c) the amount that ought to have been paid to the Scottish Ministers; and
 - (d) the amount of the difference between the amount already paid and the amount that ought to have been paid, and whether a repayment by them, or by the ambulance trust or responsible body concerned, or further payment to the Scottish Ministers is required.

Provision of statements to ambulance trust or responsible body in cases of overpayments and underpayments

- 10.—(1) Where the Scottish Ministers require a payment to be made under regulation 7(2)(b)(ii) or (iii), or make a payment under regulation 8(2)(b), they shall send the ambulance trust or responsible body concerned a statement showing—
- (a) the name and address of the injured person to whom the statement relates;
 - (b) the total amount already paid by the Scottish Ministers;
 - (c) the amount that ought to have been paid by the Scottish Ministers; and
 - (d) the amount of the difference between the amount already paid and the amount that ought to have been paid; and

⁽⁸⁾ See section 162(6) of the 2003 Act for the definition of relevant ambulance trust.

⁽⁹⁾ See section 160(4) of the 2003 Act for the definition of responsible body.

- (e) whether—
 - (i) a repayment to the Scottish Ministers is required,
 - (ii) a repayment to the person who paid the relevant NHS charges is required, or
 - (iii) a further payment by the Scottish Ministers is required.
- (2) Where the Scottish Ministers make a deduction under regulation 7(2)(b)(i), they shall send the ambulance trust or responsible body concerned a statement showing—
 - (a) the name and address of the injured person to whom the statement relates;
 - (b) the total amount already paid by the Scottish Ministers;
 - (c) the amount that ought to have been paid by the Scottish Ministers; and
 - (d) the amount of the deduction.

St Andrew's House,
Edinburgh
2006

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 provides for a scheme for the recovery of charges in cases where an injured person who receives a compensation payment in respect of the injury has received National Health Service hospital treatment or ambulance services. The charges are specified in certificates issued by the Scottish Ministers, and are payable by persons who pay compensation to the injured person.

These Regulations make provision for—

- (a) the amount of NHS charges which a person is liable to pay and which is to be specified in a certificate (regulations 2 and 3);
- (b) the treatment to be taken into account for the purposes of the certificate (regulation 4);
- (c) the apportionment of the amount of NHS charges where more than one person pays compensation (regulation 5);
- (d) the amount of NHS charges where certificates are issued both by the Scottish Ministers and the Secretary of State (regulation 6); and
- (e) repayment of overpayments and recovery of underpayments of NHS charges (regulations 7 to 10).