
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 592

NATIONAL HEALTH SERVICE

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

Made - - - - 13th December 2006
*Laid before the Scottish
Parliament* - - - - 15th December 2006
Coming into force - - 29th January 2007

The Scottish Ministers, in exercise of the powers conferred by sections 151(8) and (9), 153(10) and (11), 160(1) to (3), 162(3), 163, 164(4), 168, and 195(1) and (2) of, and paragraph 8 of Schedule 10 to, 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:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Personal Injuries (NHS Charges) (General) (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; and

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

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

Application for a certificate of NHS charges

2.—(1) An application for a certificate shall be made to the Scottish Ministers and shall include the following particulars or documents—

(a) the full name and address of the injured person;

(b) the date of birth, and where known, the national insurance number of that person;

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

- (c) the date on which the injury occurred;
- (d) the nature of the injury;
- (e) the name and address of any hospital at which the injured person received NHS treatment⁽²⁾ in respect of that person's injury;
- (f) where the applicant has made a compensation payment in respect of the injury, the date on which that payment was made;
- (g) where the certificate applied for relates to a claim to which any of the circumstances specified in paragraphs (a) to (g) of section 153(3) (information contained in certificates) applies—
 - (i) a statement of the proportion by which the damages payable in respect of the claim are to be reduced to reflect the injured person's share in the responsibility for the injury in question; and
 - (ii) a copy of the order, judgement, minute or document which provides for the reduction; and
- (h) where the certificate applied for relates to a qualifying claim⁽³⁾ the report referred to in regulation 3(1)(a).

(2) An application under section 151(7) must be made not later than 14 days after the date on which the compensation payment is made.

(3) The prescribed period for the purposes of section 151(8)(b) (application for certificates of NHS charges) is 28 days.

Reduction of NHS charges in cases of contributory negligence

3.—(1) The circumstances in which the amount (or amounts) specified in a certificate relating to a qualifying claim are to be reduced in accordance with section 153(10) are where—

- (a) the applicant for the certificate sends to the Scottish Ministers a report which contains the information specified in paragraph (2) and is signed by the parties, to the agreement referred to in paragraph (2)(a); and
- (b) it appears to the Scottish Ministers from that report that the agreement was reached in a fair manner.

(2) For the purposes of paragraph (1)(a) the following information is specified—

- (a) a statement that it was agreed by or on behalf of the injured person and the person who proposed to make a compensation payment that the damages payable under the settlement were to be reduced to reflect the injured person's share in the responsibility for the injury in question;
- (b) a statement as to how that agreement was reached;
- (c) the amount of damages payable under the settlement had there been no such agreement;
- (d) the amount or proportion by which it was agreed that the damages were to be reduced; and
- (e) the names of all those involved in the settlement process.

Particulars as to amounts specified in certificate

4. The particulars to which a person to whom a certificate is issued is entitled, in accordance with section 153(11), are—

(2) See section 168 of the 2003 Act for the meaning of NHS treatment.

(3) See section 153(9) of the 2003 Act for the meaning of qualifying claim. Section 153(9) was amended by the Health Act 2006 (c. 28), section 73.

- (a) in respect of NHS ambulance services counted for the purposes of determining any amount in the certificate—
 - (i) the name of the ambulance trust⁽⁴⁾ which provided those services;
 - (ii) the date on which the services were provided; and
 - (iii) the name and address of any hospital to which the injured person was taken; and
- (b) in respect of NHS treatment counted for the purposes of determining any amount in the certificate—
 - (i) the name and address of the responsible body⁽⁵⁾ of any hospital at which that treatment took place; and
 - (ii) whether the injured person was admitted to any hospital and, if so, the number of days of admission counted at each hospital.

Information to be provided with respect to an injured person

5.—(1) A person specified in section 160(1)(a) shall send to the Scottish Ministers the information set out in paragraph (3)(a) and (b) and, where known, the information set out in paragraph 3(c) to (g) not later than 14 days after the date on which the claim in respect of the injury is made by or on behalf of the injured person.

(2) A person specified in section 160(1)(b) to (e) shall send, where known, to the Scottish Ministers such information set out in paragraph (3) not later than 14 days after the date on which the Scottish Ministers request it.

- (3) The information referred to in paragraphs (1) and (2) is—
- (a) the full name and address of the injured person;
 - (b) the full name and address of—
 - (i) the person against whom the claim is made;
 - (ii) anyone acting on behalf of that person;
 - (c) the date of birth or national insurance number of that person;
 - (d) the date on which the injury occurred;
 - (e) the nature of the injury;
 - (f) in respect of NHS treatment received at a hospital in respect of the injury—
 - (i) the name and address of the hospital; and
 - (ii) whether the injured person was admitted to hospital and if so the date of admission and discharge; and
 - (g) in respect of NHS ambulance services provided to the injured person as a result of the person's injury—
 - (i) the name and address of the ambulance trust which provided those services;
 - (ii) the date on which the services were provided; and
 - (iii) the name and address of any hospital to which the injured person was taken.

(4) The responsible body of each hospital at which an injured person received NHS treatment in respect of the person's injury shall send the following information in relation to that person to the Scottish Ministers not later than 14 days after the date on which the Scottish Ministers request it—

- (a) the date the treatment began;

(4) See section 160(4) of the 2003 Act for the definition of ambulance trust.

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

- (b) whether and, if so, the date on which, NHS ambulance services were provided to the injured person as a result of the injury, for the purpose of taking the person to a hospital in relation to which it is the responsible body (including taking the person from one such hospital to another such hospital);
- (c) whether the injured person was admitted to a hospital in relation to which it is the responsible body and, if so, the dates of admission and discharge;
- (d) where known, the name and address of any other hospital at which the injured person received treatment; and
- (e) whether there is likely to be further treatment in respect of the injury.

(5) Any ambulance trust which provided NHS ambulance services to the injured person in respect of the person's injury shall send the following information in relation to that person to the Scottish Ministers not later than 14 days after the date on which the Scottish Ministers request it—

- (a) the date on which those services were provided to the injured person as a result of the injury; and
- (b) the name and address of any hospital to which the injured person was taken for NHS treatment.

Payments to hospitals and ambulance trusts

6.—(1) The Scottish Ministers—

- (a) shall make any payment under section 162(1) (payment of NHS charges to hospitals or ambulance trusts) not later than 40 days after the day they receive a payment of relevant NHS charges⁽⁶⁾;
- (b) may make more than one such payment at the same time; and
- (c) may do so by direct credit transfer.

(2) In respect of each payment the Scottish Ministers shall send to the responsible body or relevant ambulance trust⁽⁷⁾ a statement showing—

- (a) the name and address of the injured person to whom the statement relates;
- (b) the amount of the payment; and
- (c) the date of the incident in respect of which the payment is made.

(3) Where—

- (a) the Scottish Ministers receive a payment of relevant NHS charges; and
- (b) the responsible body of the hospital (“the old body”) or the relevant ambulance trust (“the old trust”) concerned has ceased to exist,

the Scottish Ministers shall pay the amount received to the body to which the property, rights and liabilities of the old body or the old trust have been transferred.

(4) If the property, rights and liabilities of the old body or the old trust have been transferred to more than one body, the Scottish Ministers, may, for the purposes of paragraph (3), divide the payment among those bodies in such manner as they consider appropriate.

⁽⁶⁾ See section 150(10) of the 2003 Act for the definition of relevant NHS charges.

⁽⁷⁾ See section 162(6) of that Act for the definition of relevant ambulance trust.

Structured settlements

7.—(1) This regulation applies where, apart from the provisions of this regulation, the payments due under an agreement or court order referred to in paragraph (2) would fall to be treated for the purposes of the Act as compensation payments.

- (2) The agreement or court order referred to in paragraph (1) is—
- (a) an agreement entered into in final settlement of a claim made by or on behalf of an injured person for—
 - (i) the making of periodical compensation payments (whether of an income or capital nature); or
 - (ii) the making of such payments and lump sum payments; or
 - (b) an order by a court which—
 - (i) awards damages to an injured person in respect of injury or death arising out of an incident; and
 - (ii) orders that the damages are wholly or partly to take the form of periodical payments.
- (3) Where this regulation applies—
- (a) the person liable to make the payment under the agreement or order shall be taken to have made a single compensation payment on the day of agreement or the date of making the court order; and
 - (b) payments under the agreement or court order referred to in paragraph (2) and any other payment made to the injured person after the day of agreement or court order in respect of the same incident, shall be taken not to be compensation payments and are prescribed for the purposes of paragraph 8 of Schedule 10 to the Act.
- (4) In this regulation, “the day of agreement” means—
- (a) if the agreement referred to in paragraph (2)(a) is approved by the court, the day on which that approval is given; and
 - (b) in any other case, the day on which the agreement is entered into.

Interim payments repaid under court order

- 8.—(1) This regulation applies where—
- (a) a person has made a payment of relevant NHS charges to the Scottish Ministers;
 - (b) that payment relates to a compensation payment which is an interim payment of damages in respect of the injury, the whole amount of which a court has ordered to be repaid; and
 - (c) no other compensation payment has been made by that person to the injured person in respect of the same injury.
- (2) Where this regulation applies, the Scottish Ministers shall pay to the person who made the compensation payment the amount of the payment in paragraph (1)(a).
- (3) Where this regulation applies and the Scottish Ministers have (under section 162(1)) made the payment to a responsible body or relevant ambulance trust, the Scottish Ministers may—
- (a) deduct the amount paid to that responsible body or relevant ambulance trust from any future payment due under that section;
 - (b) require the responsible body or relevant ambulance trust to pay that amount to them; or
 - (c) discharge their duty under paragraph (2) by requiring the responsible body or relevant ambulance trust to pay that amount to the person who paid the relevant NHS charges.

(4) Where the Scottish Ministers make a deduction or a demand for payment under paragraph (3), they shall (with the demand or the payment from which the deduction is made) send the responsible body or relevant ambulance trust a statement showing—

- (a) the name and address of the injured person to whom the statement relates;
- (b) the amount already paid by the Scottish Ministers; and
- (c) whether that amount has been deducted, or payment to the Scottish Ministers or to the person who paid the relevant NHS charges is required.

Liability of insurers

9. Where—

- (a) a policy of insurance is treated under section 164(1) as covering a person's liability under section 150(2)(liability to pay NHS charges);
- (b) under the policy of insurance the amount of cover in respect of the injury is limited to, or by reference to—
 - (i) a maximum sum; or
 - (ii) a proportion of the compensation for which the injured person is liable in respect of the injury; and
- (c) in consequence of the limitation, a proportion of the compensation for which the injured person is liable in respect of the injury would not be covered by the policy, but for section 164(1),

the liability imposed on the insurer by section 164(1) shall be reduced by same proportion as its liability for the compensation payment.

Exempted payments

10.—(1) Without prejudice to the provisions of regulation 7(3)(b), the following are payments prescribed for the purposes of paragraph 8 of Schedule 10 (payments excluded from definition of compensation payment in section 150(3))—

- (a) an award of compensation made to or in respect of the injured person under the Criminal Injuries Compensation Act 1995(8);
- (b) any payment made to or in respect of the injured person under the Vaccine Damage Payments Act 1979(9).

St Andrew's House,
Edinburgh
13th December 2006

ANDREW P KERR
A member of the Scottish Executive

(8) 1995 c. 53.
(9) 1979 c. 17.

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 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.

Regulation 2 to 10 make provision as to the following matters in connection with the scheme—

- (a) the particulars to be included in applications for certificates and the period within which certain applications must be made (regulation 2);
- (b) the circumstances when there may be an reduction of the amount of NHS charges where the injured person agrees to have shared responsibility for the injury (regulation 3);
- (c) particulars to which a person who is issued with a certificate is entitled to be provided with (regulation 4);
- (d) the classes of people who must provide information relating to the injured person to the Scottish Ministers (whether of their own accord or following a request from the Scottish Ministers) and the timeframes within which the information must be provided (regulation 5);
- (e) the manner with which the Scottish Ministers must make payments of NHS charges to hospitals and ambulance trusts (including provision where the body who provided the services for which payment is due is no longer in existence) and the information that must accompany those payments (regulation 6);
- (f) application of the scheme in respect of structured settlements (regulation 7) and interim payments (regulation 8);
- (g) the limitation of the liability of insurers in respect of compensation payments where the insured person's liability to pay in respect of the injury is greater than that covered by the insurance policy (regulation 9); and
- (h) the exclusion of payments made under the Criminal Injuries Compensation Act 1995 and the Vaccine Damage Payments Act 1979 from the scheme (regulation 10).