

These notes refer to the The Road Traffic (NHS Charges) Act 1999 (c.3) which received Royal Assent on 10 March 1999

THE ROAD TRAFFIC (NHS CHARGES) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Payment for hospital treatment of traffic casualties

Section 1 sets out the circumstances in which NHS charges are due. These are largely as found in the Road Traffic Act 1988 although costs will, for the first time, be recovered through the Motor Insurers' Bureau (MIB). At present MIB provides compensation in those cases where the driver is uninsured or untraceable but it is not liable for NHS charges. The Act will bring MIB into the scheme although it is intended that regulations will provide that MIB is not liable to pay NHS charges in relation to accidents occurring before the scheme comes into force.

Sections 2 and 3: Certificates of NHS charges

The present scheme gives powers to hospitals to collect charges. The new Act transfers collection to the Secretary of State who will issue certificates of the charges which are due. The intention is that this work will be undertaken, on behalf of the Secretary of State, by the Compensation Recovery Unit (CRU), a part of the Benefits Agency based on Tyneside.

CRU was established in 1990 in order to undertake the administrative work associated with the scheme for recovery of certain state benefits paid where both they and compensation are paid in respect of the same accident, injury or disease. The Unit already has extensive links with the insurance industry and established procedures based on a certificate system. It is intended that the Act and the regulations made under it should mirror, where possible, these established procedures so that the new work of collecting NHS charges can be undertaken at minimal additional cost and within a system already known and in use by the insurance industry.

Under the provisions of the benefit recovery scheme, a compensator is liable for the full amount of benefit paid up to the date of the compensation payment (subject to a five year maximum). In turn he may reduce the amount of compensation payable to the injured person, but only where benefits and compensation have been paid for a like need. For that reason, in the benefit recovery scheme the compensator must apply for a certificate of charges before making the compensation payment. The amount of that payment can be affected by the benefit recovery. In the NHS scheme the amount of compensation is unaffected by the NHS charges and the application for a certificate can be made both before and after compensation has been paid. Section 2 of the Act therefore contains provisions which will allow compensators to apply for certificates of NHS charges before making a payment of compensation so that in cases where there is both benefit and NHS recovery the two recoveries can be handled together by both government and industry for administrative ease and efficiency.

According to the circumstances of the case certificates will be issued with or without an expiry date, or will expire when a particular event occurs. If an NHS charges certificate is issued with an expiry date and the certificate has expired by the time the compensation payment is made a further certificate must be obtained. A compensator must also apply

for a certificate, after making a compensation payment, if no certificate has been issued to him in respect of the casualty. These obligations do not arise if the compensator has applied for a certificate shortly before making the payment.

Section 3 introduces the powers which will enable charges to be calculated according to a tariff. We intend that the tariff should be as simple as possible. It will be set out in regulations and is expected to consist of:

- a set fee for patients treated in accident and emergency departments or out-patient clinics, regardless of the number of times the patient has to attend hospital;
- and a daily rate for patients who are admitted to hospital for treatment.

In addition it is intended that there will be a ceiling for costs in any one case. The tariff will be calculated so that the amounts collected nationally reflect the total cost of the relevant treatment to the NHS.

The section allows for different limits to apply to NHS charges following accidents which happened before specific dates. The intention is to levy charges more closely reflecting full costs of NHS treatment for accidents which happened on or after 2 July 1997, the date of the Chancellor's Budget statement that such a move would take place. Claims settled after the Act comes into effect but which relate to accidents which happened before 2 July 1997 will attract NHS charges at a rate set to produce only the maximum chargeable under section 157 of the Road Traffic Act 1988. The figures were last updated in 1995 by the [Road Traffic Accidents \(Payments for Treatment\) Order 1995 \[S.I. 1995/889\]](#). They are:

- patients receiving out-patient treatment: up to a maximum of £295;
- patients admitted to hospital for treatment: up to a maximum of £2949.

Powers are also available in section 3 enabling regulations to be drafted to deal with more complicated cases. For example where a person receives treatment at more than one hospital it is the intention to provide each hospital with a proportion of the NHS charges, subject to the overall limit in each case. Regulations will also provide for cases where there is more than one compensator as can happen, for example, in motorway accidents involving many vehicles.

Section 5: Recovery of NHS charges

This section enables the Secretary of State to issue a certificate of NHS charges where a claim for compensation has been settled but no application for a certificate has been made as required by section 2. It also enables the Secretary of State to recover NHS charges which have not been paid on time. Where necessary, the Secretary of State can enforce payment through the courts.

Sections 6 to 10: Reviews and appeals

Under the present NHS charges scheme there is no procedure for review. Section 6 allows for internal review of any certificate and this can be initiated either by CRU or on application by the compensator. The terms of the new scheme follow closely the provisions for review found in the Social Security (Recovery of Benefits) Act 1997, as amended by the Social Security Act 1998.

Section 7 covers appeals. The grounds of appeal set out closely follow those in the benefit recovery scheme. It is intended that procedures to be set out by regulation will also be modelled on that scheme's rules. As in the benefit recovery scheme, a right of appeal will not arise until such time as the liability to repay NHS charges has been discharged.

The same tribunals which hear appeals in compensation recovery cases will hear NHS charges appeals in England and Wales. Currently compensation recovery cases are

heard by Medical Appeal Tribunals, although in the course of 1999 these appeals will transfer to the Unified Appeal Tribunal introduced by the Social Security Act 1998.

Appeals in Scotland will initially be dealt with in the same way although it is intended that regulations will provide for an alternative tribunal service not later than devolution.

In the benefit recovery scheme further appeal is made first to the Social Security Commissioners and then to the courts. There is no appeal to the Social Security Commissioners in the case of NHS charges. Section 9 provides an avenue of appeal on a point of law direct to the courts.

Section 11: Provision of information

In order for the new system of collection to work information will have to be exchanged by the various parties involved in the chain of events from accident to payment of compensation. The Act gives powers under regulations for gathering information relevant to the collection of NHS charges. The mechanism for NHS charges recovery relies on the compensator being able to supply the CRU with sufficient information for the details of the claim to be verified with the relevant hospital. It is likely that the additional powers to collect information from, for example, the accident victim or his representative will only be used where the information provided by the compensator is insufficient.

It is envisaged that in the normal course of events with the tariff presently planned the only information which will be needed about the victim's NHS treatment will be to categorise it as treatment without admission, for example in an accident and emergency department or an out-patient clinic, or treatment given as an in-patient plus the number of days of admission. Where however an appeal against NHS charges is subsequently made on the grounds that the treatment given was not as a result of the road traffic accident in question then there may be a need for more detailed information. Regulations will restrict applications for such information so that it can only be sought and used in limited circumstances.

Section 11 also provides a power to define what is meant by a claim and the person against whom a claim is made. It is intended that regulations will require those who might make a compensation payment falling within the scheme to notify CRU, without being asked, that a claim for compensation has been made, and to provide certain information about the claim. Accordingly "claim" and "person against whom the claim is made" will, for the purpose of this Act, be defined in regulations to make it clear who has the obligation to give the information and when that obligation arises.

There are variations in claims handling practice within the insurance industry and it is our intention that these should not affect the stage at which CRU needs to be made aware of a claim. Since it is also possible that insurance company procedures for dealing with claims may change over time it is desirable to be able to change these definitions by regulations (rather than primary legislation) so as to be able to keep abreast of current practice.

Section 12: Use of information held by the Secretary of State

This section allows information obtained for the NHS charges scheme to be used for the purposes of the benefit recovery scheme and vice versa. This provision will provide maximum flexibility for both the government and the insurance industry so that, for example, in the cases involving both NHS and benefit recovery CRU can seek and rely on a single set of information for both purposes.

Section 13: Payment of NHS charges to hospitals

Since introduction in the 1930s the receipts generated under the Road Traffic Acts have always gone directly to the hospital providing the care. The Act confirms that hospitals

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will continue to be the direct recipients of the money which is recouped. It is intended that regulations will provide for the money collected by the CRU to be passed directly to the relevant hospitals.

Section 15: Application of Act to military hospitals

This section allows the new administrative arrangements for recouping the costs of treatment to be extended to hospitals run by the Ministry of Defence which offer health care to the civilian population.

Section 18: Consequential amendments

The provisions now found in section 157 of the Road Traffic Act 1988 allowing hospitals to recoup the costs of treating road traffic accident victims pre-date the NHS, and apply equally to any non-NHS not-for-profit hospitals and, in the case of the Emergency Treatment Fee, to general practitioners. It is not the intention to deprive not-for-profit hospitals and GPs of this long-standing source of income and so the Act modifies the 1988 Act to exclude NHS hospitals (which will be covered by the new legislation) from its provisions, leaving the current arrangements on the statute book for the benefit of others. This means that the Emergency Treatment Fee, currently set at £21.30 per person requiring emergency treatment and payable by the driver of a car involved in the accident, will no longer be collected by NHS hospitals.