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STATUTORY INSTRUMENTS

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**1999 No. 1843 (S. 111)**

**NATIONAL HEALTH SERVICE, SCOTLAND  
ROAD TRAFFIC**

**The Road Traffic (NHS Charges) (Reviews  
and Appeals) (Scotland) Regulations 1999**

<i>Made</i>	- - - -	<i>28th June 1999</i>
<i>Laid before Parliament</i>		<i>29th June 1999</i>
<i>Coming into force</i>	- -	<i>1st July 1999</i>

The Secretary of State, in exercise of the powers conferred on him by sections 6(1), 7(4), 8(5), (6)(b) and (7) and 16(2) of the Road Traffic (NHS Charges) Act 1999<sup>(1)</sup> and of all other powers enabling him in that behalf, and after consultation with the Scottish Committee of the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992<sup>(2)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Road Traffic (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 1999 and shall come into force on 1st July 1999.

(2) In these Regulations—

“the Act” means the Road Traffic (NHS Charges) Act 1999;

“appeal” means an appeal against a certificate under section 7 of the Act;

“certificate” means a certificate of NHS charges, issued under section 2 of the Act;

“Compensation Recovery Unit” means the Compensation Recovery Unit of the Department of Social Security<sup>(3)</sup>;

“compensator” means a person making a compensation payment within the meaning of section 1(3) of the Act;

“tribunal” means the Road Traffic (NHS Charges) Tribunal for Scotland constituted under regulation 4 of these Regulations.

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(1) 1999 c. 3.

(2) 1992 c. 53.

(3) The address of the Compensation Recovery Unit is, on the day these Regulations come into force: Reyrolle Building, Hebburn, Tyne and Wear, NB31 1XB.

(3) A reference in these Regulations to the parties to the proceedings is a reference to the Secretary of State and any person entitled under section 7(1) of the Act to make an appeal.

(4) Where, by any provisions of these Regulations—

- (a) any notice or other document is required to be sent to the Compensation Recovery Unit, or the clerk to or the chairman of the tribunal, that notice or document shall be treated as having been so sent on the day that it is received in the office of the Compensation Recovery Unit or of the clerk to the tribunal, as appropriate; and
- (b) any notice or other document is required to be sent to any other person, that notice or document shall, if sent by post to that person's last known or notified address, be treated as having been sent on the day that it was posted.

(5) Where by these Regulations any power is conferred on the chairman of the tribunal then—

- (a) if the power is to be exercised at the hearing of an appeal or application, it shall be exercised by the chairman of the tribunal hearing the appeal or application; and
- (b) otherwise, it shall be exercised by a person who is eligible to be nominated to act as a chairman.

### **Review of certificates**

2. A certificate may be reviewed under section 6 of the Act where the Secretary of State is satisfied that—

- (a) a mistake (whether in computation of the amount specified or otherwise) occurred in the preparation of the certificate;
- (b) the amount specified in the certificate is in excess of the amount due to the Secretary of State;
- (c) incorrect or insufficient information was supplied to the Secretary of State by the person who applied for the certificate and in consequence the amount specified in the certificate was less than it would have been had the information supplied been correct or sufficient; or
- (d) it appears to the Secretary of State that, under section 7 of the Act, a ground for appeal is satisfied.

### **Manner of making appeals and time limits**

3.—(1) Any appeal against a certificate shall, subject to paragraph (10), be in writing on a form approved by the Secretary of State and shall be sent to the Compensation Recovery Unit—

- (a) not later than 3 months after the date the compensator discharged the liability under section 1 of the Act;
- (b) where the certificate is reviewed by the Secretary of State in accordance with regulation 3(17), not later than 3 months after the date the certificate is confirmed, or, as the case may be, a fresh certificate is issued; or
- (c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of a traffic casualty and arising out of the injury or death, not later than 3 months after the date of that agreement.

(2) The time specified by this regulation for the making of any appeal may be extended, even though the time so specified may already have expired, provided the conditions set out in paragraphs (3) to (7) are satisfied; and any application for an extension of time under this paragraph shall be made to the Compensation Recovery Unit and shall be determined by the chairman of the tribunal.

(3) Where the time specified for the making of an appeal has already expired, an application for an extension of time for making an appeal shall not be granted unless the applicant has satisfied the chairman considering the application that—

- (a) if the application is granted there are reasonable prospects that such an appeal will be successful; and
- (b) it is in the interests of justice that the application be granted.

(4) For the purposes of paragraph (3) it shall not be considered to be in the interests of justice to grant an application unless the chairman considering the application is satisfied that—

- (a) special reasons exist, which are wholly exceptional and which relate to the history or facts of the case; and
- (b) such special reasons have existed throughout the period beginning with the day following the expiry of the time specified by paragraph (1) for the making of an appeal and ending with the day on which the application for an extension of time is made; and
- (c) such special reasons manifestly constitute a reasonable excuse of compelling weight for the applicant's failure to make an appeal within the time specified.

(5) In determining whether there are special reasons for granting an application for an extension of time for making an appeal under paragraph (2) the chairman considering the application shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time specified for the making of the appeal and the making of the application for an extension of time, the more compelling should be the special reasons on which the application is based.

(6) In determining whether facts constitute special reasons for granting an application for an extension of time for making an appeal under paragraph (2) no account shall be taken of the following—

- (a) that the applicant or anyone acting for him or advising him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of any time limits imposed by paragraph (1));
- (b) that a court has taken a different view of the law from that previously understood and applied.

(7) Notwithstanding paragraph (2) no appeal may in any event be brought later than 6 years after the beginning of the period specified in paragraph (1) or if more than one such period is relevant, the one beginning later or latest.

(8) An application under paragraph (2) for an extension of time which has been refused may not be renewed.

(9) Any appeal or any application under this regulation shall contain the following particulars—

- (a) in the case of an appeal the date of the certificate or review decision of the Secretary of State against which the appeal is made, the question under section 7 of the Act to which the appeal relates and a summary of the arguments relied on by the person making the appeal to support his contention that the certificate is wrong;
- (b) in the case of an application under paragraph (2) for an extension of time in which to appeal, the particulars required under sub-paragraph (a) in relation to the appeal which it is proposed to bring, together with particulars of the special reasons on which the application is based.

(10) Where an appeal is not made on the form approved for the time being, but is made in writing and contains all the particulars required under paragraph (9) the Secretary of State may treat that appeal as duly made.

(11) Where it appears to the Secretary of State that an appeal or application does not contain the particulars required under paragraph (9) he may direct the person making the appeal or application to provide such particulars or such document.

(12) Where paragraph (11) applies, the Secretary of State may extend the time specified by this regulation for making the application by a period of not more than 14 days.

(13) Where further particulars of a document are required under paragraph (11) they shall be sent to the Compensation Recovery Unit within such period as the Secretary of State may direct.

(14) The date of an appeal shall be the date on which all the particulars required under paragraph (9) are received by the Compensation Recovery Unit.

(15) In the case of an application under paragraph (2) for an extension of time for making an appeal, the chairman who determines that application shall record his decision in writing together with a statement of the reasons for the decision.

(16) As soon as practicable after the decision has been made, it shall be communicated to the applicant and to the Secretary of State and if within 3 months of such communication being sent the applicant or the Secretary of State so requests in writing, a copy of the record referred to in paragraph (15) shall be supplied to the person making that request.

(17) The Secretary of State may treat any appeal as an application for review under section 6 of the Act.

### **Appointment of Tribunal**

4.—(1) For the purposes of determining appeals, the Secretary of State shall appoint a tribunal to be known as the Road Traffic (NHS Charges) Tribunal, Scotland which shall consist of a legally qualified chairman, and two other members, one of whom shall be a medical practitioner.

(2) A person shall not act as a member of the tribunal for the purpose of consideration of an appeal referred to the tribunal if he is or may be directly affected by that appeal.

(3) The terms of appointment of members of the tribunal shall be determined by the Secretary of State.

(4) The Secretary of State shall appoint a clerk and such staff of the tribunal as may be necessary.

### **General provisions relating to the procedure of tribunal**

5.—(1) Subject to the provisions of the Act and of these Regulations—

- (a) the procedure in connection with the consideration and determination of any appeal shall be such as the chairman of the tribunal shall determine;
- (b) the chairman of the tribunal may give directions requiring any party to the proceedings to comply with any provision of these Regulations and may further at any stage of the proceedings either of his own motion or on a written application made to the clerk to the tribunal by any such party give such direction as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to provide such further particulars or to produce such documents as may reasonably be required;
- (c) where under these Regulations the clerk to the tribunal is authorised to take steps in relation to the procedure of the tribunal, he may give directions requiring any party to the proceedings to comply with any provisions of these Regulations;
- (d) any person who by virtue of the provisions of these Regulations has the right to be heard at a hearing may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such

hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Act and these Regulations.

(2) For the purpose of arriving at its decision a tribunal shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal, other than the person acting as clerk to the tribunal, to withdraw from the sitting of the tribunal, except that—

- (a) a member of the Council on Tribunals, or of the Scottish Committee of the Council; and
- (b) with the leave of the chairman of the tribunal,
  - (i) any person undergoing training as a chairman or other member of a tribunal or as a clerk to such a tribunal, and
  - (ii) any other person to whose presence every party to the proceedings actually present consents,

may remain present at any such sitting.

(3) Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council from being present at a hearing before a tribunal, in his capacity as such, notwithstanding that the hearing is not in public.

(4) Where an appeal is referred to the tribunal by the Secretary of State, the clerk to the tribunal shall give notice of it to the other parties to the proceedings.

#### **Requirement for oral hearings**

6.—(1) Where an appeal is referred to the tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that appeal to be held.

(2) A notification under paragraph (1) that a party wishes an oral hearing shall be in writing and shall be made within 10 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman of the tribunal may direct.

(3) Where the clerk to the tribunal receives a notification in accordance with paragraph (2), the tribunal shall hold an oral hearing.

(4) The chairman of the tribunal may of his own motion require an oral hearing to be held if he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision.

#### **Procedure at oral hearings**

7.—(1) Except where paragraph (4) applies, not less than 21 days notice, beginning with the day on which the notice is sent and ending on the day before the hearing, of the time and place of any oral hearing before the tribunal shall be sent to every party to the proceedings, and if such notice has not been sent to a person to whom it should have been sent under the provisions of this paragraph the hearing may proceed only with the consent of that person.

(2) The chairman of the tribunal may give notice before or during an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any appeal referred under section 8 of the Act notwithstanding that a party to the proceedings has failed to indicate his availability for a hearing or to provide all the information which may have been requested, if the chairman is satisfied that such party—

- (a) has failed to comply with a direction regarding his availability or requiring information under regulation 5(1)(b) or (c); and
- (b) has not given any explanation for his failure to comply with such a direction,

provided that the chairman is satisfied that the tribunal has sufficient information in order for the question to be determined.

(3) The chairman of the tribunal may give notice before or during an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any question where he believes the appeal on that ground has no reasonable prospect of success.

(4) Any party to the proceedings may waive his right to receive not less than 21 days notice of the time and place of any oral hearing as specified in paragraph (1).

(5) If a party to the proceedings to whom notice has been sent under paragraph (1) fails to appear at the hearing the tribunal may, having regard to all the circumstances including any explanation offered for the absence and, where applicable, the circumstances set out in paragraph (2)(a) and (b), proceed with the hearing notwithstanding his absence, or give such directions with a view to the determination of any question referred to it as it may think proper.

(6) If a party to the proceedings has waived his right to be sent notice under paragraph (4), the tribunal may proceed with the hearing notwithstanding his absence.

(7) Any oral hearing before the tribunal shall be in public except where the person making the appeal requests a private hearing and there is no compelling reason why there should be a public hearing.

(8) At any oral hearing any party to the proceedings shall be entitled to be present and be heard.

(9) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) any person undergoing training as a chairman or other member of a tribunal or as a clerk to such a tribunal;
- (b) any person acting on behalf of the Secretary of State in the training or supervision of clerks to tribunals or of officers of the Secretary of State;
- (c) any person undergoing training as an officer of the Secretary of State; and
- (d) with the leave of the chairman of the tribunal and the consent of every party to the proceedings actually present, any other person.

(10) Nothing in paragraph (9) affects the rights of any person mentioned in sub-paragraph (a) of that paragraph at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this regulation prevents the presence at an oral hearing of any witness.

(11) Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

### **Postponement and adjournment**

**8.—**(1) Where a person to whom notice of an oral hearing by the tribunal has been sent wishes to apply for that hearing to be postponed, he shall do so in writing to the clerk to the tribunal stating his reasons for the application, and the clerk may grant or refuse the request as he thinks fit or may pass the request to the chairman, who may grant or refuse the request as he thinks fit.

(2) The chairman or the clerk to the tribunal may of his own motion at any time before the beginning of an oral hearing postpone that hearing.

(3) An oral hearing may be adjourned by the tribunal at any time on the application of any party to the proceedings or of its own motion.

(4) Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted, the proceedings at that hearing shall be by way of a complete rehearing of the case.

### **Withdrawal of appeals**

**9.** Any appeal may be withdrawn by the person who made the appeal—

- (a) before the appeal has been referred to the tribunal under section 8 of the Act, by written notice to the Compensation Recovery Unit and with the consent of the Secretary of State;
- (b) after the appeal has been referred to the tribunal and before the hearing begins by written notice to the chairman of the tribunal and with the written consent of the Secretary of State;
- (c) after the hearing has begun, at any time before the determination is made with the leave of the chairman of the tribunal and the consent of the Secretary of State.

### **Non-disclosure of medical evidence**

**10.**—(1) Where, in connection with the consideration of any appeal, there is before the tribunal medical advice or medical evidence relating to a person which has not been disclosed to him, and in the opinion of the chairman of the tribunal the disclosure of that advice or evidence, if it came to that person's attention, would be harmful to his health, such advice or evidence shall not be required to be disclosed.

(2) Evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates unless the chairman is satisfied that it is in the interests of the person to whom the evidence relates to do so.

(3) The tribunal shall not be precluded from taking into account for the purposes of the determination evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).

### **Decisions of the tribunal**

**11.**—(1) The decision of the majority of the tribunal shall be the decision of the tribunal.

(2) The decision of the tribunal and a statement of the reasons for the tribunal's decision including its findings on questions of fact material thereto may be given orally at the end of the hearing.

(3) Every decision and the statement of reasons for that decision shall be recorded in summary by the chairman in such written form of decision notice and statement of reasons as shall have been approved by the chairman, and such decision and statement of reasons shall be signed by the chairman.

(4) As soon as may be practicable after an appeal has been decided by the tribunal, a copy of the decision notice and statement of reasons made in accordance with paragraph (3) shall be sent to every party to the proceedings who shall be informed of his right of appeal on a point of law to the Court of Session under section 9(2) of the Act.

(5) If a decision is not unanimous, the statement of reasons shall record that one of the members dissented and the reasons given by him for dissenting.

(6) A record of the proceedings at the hearing shall be made by the chairman in such medium as he may direct and preserved by the clerk to the tribunal for 18 months, and a copy of such record shall be supplied to the parties if requested by any of them within that period.

### **Correction of accidental errors in decisions**

**12.**—(1) Accidental errors in any decision or record of a decision may at any time be corrected by the tribunal which gave the decision or by another tribunal.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or of that record and written notice of it shall be sent as soon as practicable to every party to the proceedings.

(3) There shall be no appeal against a correction made under paragraph (1) or a refusal to make such a correction.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## **Revocation**

13. The Road Traffic (NHS Charges) (Reviews and Appeals) Regulations 1999(4) are revoked in so far as they extend to Scotland.

St Andrew's House,  
Edinburgh  
28th June 1999

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision as to the circumstances in which a certificate of NHS Charges may be reviewed (regulation 2), as to the manner in which and time within which, appeals against certificates may be made and for the establishment and procedure of a tribunal in Scotland in relation to appeals under section 7 of the Road Traffic (NHS Charges) Act 1999 against a certificate of NHS charges issued under section 2 of that Act (regulations 3 to 12). The Regulations also revoke the Road Traffic (NHS Charges) (Reviews and Appeals) Regulations 1999 (S.I. [1999/786](#)) (regulation 13).