

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Recovery of Nhs Charges

NHS Charges

Section 150: Liability to pay NHS charges

310. *Section 150* sets out the circumstances in which NHS costs can be recovered. *Subsections (1)* and *(2)* provide that any person who makes a compensation payment in consequence of an injury, whether physical or psychological, will also be liable to pay NHS charges for treatment received by the injured person at a health service hospital as a result of the injury and/or for the provision of NHS ambulance services provided to the injured person as a result of the injury. The effect of *subsection (2)* is that there will be two separate recovery schemes – one for England and Wales under which money will be payable to the Secretary of State and one for Scotland under which money will be payable to the Scottish Ministers. References in this section of the notes to “the authority” are to be taken as referring to both the Secretary of State and the Scottish Ministers. The regulation making powers in Part 3 are, by virtue of section 167(1), exercisable by the Secretary of State (in relation to England and Wales) and the Scottish Ministers (in relation to Scotland). Before making any regulations the Secretary of State must, by virtue of section 195(3), consult the National Assembly for Wales.
311. *Subsection (3)* defines compensation payment. The definition is a broad one which covers payments made by the person liable, or alleged to be liable, for the injury or by his representative such as an insurance company or the Financial Services Compensation Scheme¹. The definition catches not only a final payment of damages but also an interim payment or a payment of costs only. The subsection also provides that the term “compensation payment” includes not just payments of money but payment in money’s worth which might include, for example, provision of free rehabilitation services. It does not, however, capture *ex gratia* payments where there can be no legal liability to make a payment.
312. *Subsections (3)(b)* and *(11)* specifically extend the scheme to payments made by the Motor Insurers Bureau which operates schemes to make compensation payments where drivers are uninsured or untraceable.
313. *Subsection (3)* also introduces *Schedule 10*, which lists a number of payments which are not to count as compensation payments. These include compensation orders made by the criminal courts (*paragraph 1*), payments under the Fatal Accidents Act 1976 or its Scottish or Northern Irish equivalent (*paragraphs 6 and 7*) and payments made by

¹ The Financial Services Compensation Scheme is a scheme set up under the Financial Services and Markets Act 2000 to provide compensation when the insurance company can not for example because the business has failed.

These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

trusts prescribed in regulations (*paragraph 3*). The intention is that this power would be used to prescribe trusts such as those that are set up to compensate haemophiliacs infected with HIV from blood products. *Paragraph 5 of Schedule 10* provides that the scheme will not apply where the compensator is the same hospital or ambulance service as the one which would receive NHS charges under the scheme. This might arise for example if an employee of an NHS trust was injured at work, received treatment at their employing hospital and later made a successful claim for compensation against their employer. *Paragraph 8* provides that additional items can be added to the Schedule by regulations. It is envisaged that this power will be used to prescribe items such as payments under the Criminal Injuries Compensation Scheme or the Vaccine Damage Payments Act 1979. *Subsection (12) of section 150* enables items already in the Schedule to be omitted or modified by regulations.

314. *Subsection (4)* applies the scheme to all types of payment including those made voluntarily.
315. *Subsection (5)* clarifies the meaning of the term injury, providing that it does not include disease. However, where the injured person suffers a disease attributable to the original injury for which compensation has been paid, *subsection (6)* clarifies that treatment received or ambulance services provided as a result of that disease will be received or provided as a result of the injury and would therefore fall within the scheme. Thus, treatment received as a result of a free-standing disease, such as asbestosis would be outside the scheme whereas treatment received as a result of a disease linked specifically to the injury suffered - for example, septicaemia resulting from a broken leg – would be within it.
316. *Subsections (7) to (9)* exclude from the definition of NHS treatment, private treatment provided at health service hospitals or treatment provided at such hospitals as part of primary medical or dental services (under Part 4 of this Act) or personal or general medical or dental services.
317. *Subsection (13)* makes clear that the scheme will apply only to injuries which take place after these provisions have been brought into force. *Subsection (14)* confirms that for the purposes of the scheme it is irrelevant whether an admission of liability is made when making the compensation payment.