

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Recovery of Nhs Charges

Certificates of NHS charges

Section 151: Applications for certificates of NHS charges, section 152: section 151: supplementary, and section 153: Information contained in certificates

318. *Section 151* deals with applications for certificates. *Subsection (1)* provides that a person (for example, an insurance company) may apply to the Secretary of State or the Scottish Ministers for a certificate before a compensation payment is made to an injured person. Under *subsections (7)* and *(8)*, a compensator must apply for a certificate if, at the time of making a compensation payment, he has not already been issued with a certificate or any previously issued certificate has expired. These obligations do not arise if the compensator has applied for a certificate within a period before making payment set out in regulations. It is envisaged that this would be a short period such as 28 days.
319. When the authority receives an application for a certificate, it must, under *subsection (2)*, issue such a certificate as soon as is “reasonably practicable”. A time limit is not prescribed as the authority will have to gather information from one or more NHS trusts which can take some time.
320. *Subsection (3)* deals with the length of time for which a certificate is to remain in force. This can be until a specified date which might be appropriate for example where there was ongoing treatment; until the occurrence of a specific event – for example any further admission to hospital; or indefinitely which would be appropriate for example where there was a nil certificate of charges, a certificate where the maximum charge recoverable (i.e. the cap set in regulations under *subsection (2)* of *section 153*) had already been reached, or an out patient charge and/or ambulance charge only was recorded.
321. *Section 152* makes provision in cross-border cases. *Subsections (1)* and *(2)* enable applications wrongly made to the Secretary of State or the Scottish Ministers to be referred to the other authority. *Subsections (3)* and *(4)* enable applications sent to one authority which are relevant to both to be referred to the other as well. *Subsections (5)* and *(6)* allow for a single certificate to be issued to cover liability under both the English/Welsh and the Scottish schemes.
322. *Section 153* deals with the information to be included in certificates. *Subsections (1)* and *(2)* provide that the certificate must state the amount or amounts, determined in accordance with regulations, that the compensator must pay in NHS charges.
323. *Subsection (3)* provides that where the damages awarded to an injured person have been reduced to reflect a finding of contributory negligence either made by a court under the

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Law Reform (Contributory Negligence) Act 1945 or its equivalent outside Great Britain or set out in an agreed judgement or order entered or sealed by a court in England and Wales or Northern Ireland or in a joint minute executed by the parties in Scotland (or equivalent documents elsewhere), the amount due in NHS charges will also be reduced by the same proportion.

324. *Subsection (4)* provides that where it is ascertained that no NHS charges are due because the injured person did not receive NHS treatment at a health service hospital and was not provided with NHS ambulance services as a result of the injury then the authority must issue a nil certificate of charges to show that no payments are due.
325. *Subsection (5)* sets out particular matters which may be covered by regulations. These include a cap on the overall amount payable (*subsection (5)(a)*); different amounts for different circumstances – for example out-patient or in-patient treatment and/or ambulance services, and different amounts for different areas (*subsection (5)(b)*); provision for cases where a person receives treatment at more than one hospital (*subsection (5)(c)*); and provision for cases where a fresh certificate is issued or a certificate revoked as a result of a review or appeal (*subsection (5)(f)*). Under *subsection (5)(e)*, regulations may also provide for apportionment of liability for NHS costs in cases where there is more than one person paying compensation to the same injured person. This may occur for example in a multiple road traffic accident where several compensators are involved. *Subsection (5)(g)* deals with the situation where a person has received treatment or ambulance services in both England/Wales and in Scotland and the compensator therefore has liability for NHS charges under both the English/Welsh and the Scottish schemes. It enables regulations to be made to allow liability under the English scheme to be reduced in recognition of liability in respect of the same injury arising under the Scottish scheme and vice versa. This is to ensure that a compensator is not penalised just because a person's treatment has taken place in two separate parts of Great Britain.
326. *Subsection (6)* makes clear that the amounts which regulations under *subsection (5) (a)* and *(b)* prescribe to be specified on certificates will be before any reduction for contributory negligence. This means that any reduction resulting from a finding of contributory negligence will be applied to the amounts set in regulations and not, for example, to the full treatment costs which may have exceeded the prescribed maximum recoverable.
327. *Subsections (7)* and *(8)* provide that regulations relating to apportionment or to fresh certificates issued or certificates revoked after a review or appeal can include provisions giving credit for amounts already paid, for the payment of balances and the recovery of excesses. These situations might arise, for example, where a fresh certificate was issued for a higher amount and the original lower amount had already been paid – in such cases it is envisaged that credit would be given for the amount already paid and only the outstanding balance would be due. Conversely, if a person had already paid more than was due it is envisaged that the excess payment would be recouped from the hospital or ambulance trust to which it had been passed and returned to the compensator.
328. *Subsections (9)* and *(10)* relate to cases where a claim by an injured person has been settled by a prescribed mediation process and the damages payable under the settlement are to be reduced to reflect the injured person's contributory negligence. Regulations may provide that in specified circumstances the amount due in NHS charges will be reduced by the same proportion. Regulations may also specify acceptable mediation processes. This might include, for example, prescribing the qualifications of the independent mediator or specifying that the outcome of the mediation should be a full and final settlement of the compensation claim.
329. *Subsection (11)* provides for regulations to specify the information that a compensator can, on receipt of a certificate of charges, request from the authority as to how it has arrived at the amount specified.

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330. *Subsection (12)* provides that regulations setting out the amounts due may apply to any certificates issued after the date on which the regulations come into force except where a certificate is issued after settlement of a case and the compensation payment to which it relates was made before the date of coming into force of the regulations. This is to provide for cases where, for example the tariff is revised on say 1 April, a claim has settled on 30 March but the compensator doesn't apply for a certificate until after 1 April when the tariff has changed. This makes it clear that the tariff rate before the revision will apply.