

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Recovery of Nhs Charges

Review and appeal

Section 156: Review of certificates

333. *Section 156* provides for internal review of certificates. *Subsection (1)* requires the authority to review a certificate if, after it has been issued, a finding of contributory negligence is either made by a court under the 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). This reflects the fact that such a finding reduces the liability for NHS charges as provided in *section 153*. *Subsection (2)* provides for regulations to be made to deal with cases where a claim becomes a qualifying claim as defined in *section 153(9)*, that is where a claim 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. *Subsection (3)* provides for cases where a certificate relating to the same injury has been issued in relation to the same injured person by both the Secretary of State and the Scottish Ministers or where a joint certificate has been issued to reflect liability under both schemes. It provides that, where the amounts due under one of these certificates (or parts of a certificate) have been adjusted following review or appeal, then the other authority must review its certificate (or part of a certificate) if it is satisfied that consequential adjustments are necessary or expedient. In addition to these two cases, *subsection (4)* enables a review of a certificate to be carried out by the authority either on its own initiative or on application by the compensator. *Subsection (4)(a)* provides for regulations to be made relating to the timing of such reviews and the circumstances or cases in which they may take place.
334. *Subsection (5)* provides that, following review, the authority may verify that the existing certificate is correct, make appropriate variations and issue a new certificate or revoke the old certificate. *Subsection (6)* prevents the authority from issuing a fresh certificate for a higher amount than a previous one unless satisfied that the previous certificate was based on incorrect or insufficient information supplied by the person to whom the certificate was issued. *Subsection (7)* enables a single certificate to be issued following a review to cover liability under both the English/Welsh and Scottish schemes.

Sections 157 to 159: Appeal against a certificate or a waiver decision; Appeal tribunals; and Appeal to Social Security Commissioner

335. *Sections 157 to 159* provide for appeals against certificates of charges and waiver decisions to an independent body.

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

336. *Subsection (1) of section 157 sets out the circumstances in which an appeal against a certificate may be made and subsection (2) provides that no appeal may be made until the claim to which the compensation payment relates has finally been disposed of and the amounts set out in the certificate of NHS charges have been paid. Subsections (4) and (5) enable compensators to apply for the requirement for prior payment in subsection (2) to be waived, and allow the Secretary of State or the Scottish Ministers to grant such a waiver only where it appears to him or them that requiring payment would cause exceptional financial hardship. Subsection (6) provides compensators with a right of appeal against a waiver decision using the same mechanisms as for an appeal against a certificate. It is envisaged that the waiver would only be granted in truly exceptional cases, such as where the raising of money which might later fall to be refunded might, for example, put an individual's home at risk or bankrupt a single-handed business.*
337. *Subsection (7) provides for regulations to be made as to the timing, manner and procedure for appeals and for enabling an appeal against a certificate to be treated as a review. Section 167(2) provides that regulations made by Scottish Ministers under this subsection may only be made with the consent of the Secretary of State.*
338. *Section 158 provides that appeals against both certificates and waiver decisions will be heard by appeals tribunals set up under social security legislation ('the Appeals Service'). Subsection (3) sets out the powers available to tribunals on an appeal against a certificate and subsection (4) requires the authority to act in accordance with any tribunal decision. Subsection (5) enables a single certificate to be issued following appeal to cover liability under both the English/Welsh and Scottish schemes. Subsection (6) sets out the powers available to tribunals on an appeal against a waiver decision. Subsection (7) enables regulations to be made to set out the circumstances in which medical evidence submitted for an appeal does not have to be disclosed. This might be appropriate for example in cases in which it was thought that disclosure of such evidence to the injured person or their representatives might be harmful to the person's health.*
339. *Section 159 provides for onward appeal, by either the authority or the compensator, on a point of law only, to a Social Security Commissioner. Subsection (3) applies to hearings by the Commissioner under this Section those subsections of section 14 of the Social Security Act 1998 which set out the Commissioner's powers in dealing with cases. The effect is that he may either determine a case himself or refer it back to a tribunal for decision with directions. Subsections (4) and (5) provide that, where the Commissioner refers a case back for decision, the tribunal will have the same powers as on an appeal under section 158 and that in the case of an appeal against a certificate the authority must, as under that Section, act in accordance with the tribunal's decision. Subsection (6) provides that where a Commissioner determines himself a case relating to an appeal against a certificate, the authority must act in accordance with his decision.*