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STATUTORY INSTRUMENTS

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**2006 No. 1944**

**The Recovery of Health Services  
Charges (Northern Ireland) Order 2006**

*Review and appeal*

**Review of certificates**

**8.—(1)** The Department shall review a certificate issued by it if the certificate relates to a claim made by or on behalf of an injured person—

- (a) in respect of which, after the certificate is issued, a court in Northern Ireland orders a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),
- (b) in respect of which, after the certificate is issued, a court in England and Wales or Scotland orders a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
- (c) in respect of which, after the certificate is issued, a court in a country other than Northern Ireland, England and Wales or Scotland orders a reduction of damages under any provision of the law of that country which appears to the Department to correspond to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948,
- (d) in respect of which, after the certificate is issued, an officer of a court in Northern Ireland or England and Wales enters or seals an agreed judgment or order which specifies—
  - (i) that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and
  - (ii) the amount or proportion by which they are to be so reduced,
- (e) in the case of which, after the certificate is issued, the parties to any resulting action before a court in Scotland execute a joint minute which specifies—
  - (i) that the action has been settled extra-judicially, and
  - (ii) the matters mentioned in sub-paragraph (d)(i) and (ii), or
- (f) in respect of which, after the certificate is issued, a document is made under any provision of the law of a country other than Northern Ireland, England and Wales or Scotland—
  - (i) which appears to the Department to correspond to an agreed judgment or order entered or sealed by an officer of a court in Northern Ireland, and
  - (ii) which specifies the matters mentioned in sub-paragraph (d)(i) and (ii),and notification of the order, judgment, minute or document has been given to the Department in the prescribed manner.

(2) Regulations may make provision as to the circumstances in which the Department shall review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim (as defined in Article 5(9)).

(3) The Department may review a certificate issued by it—

- (a) either within the prescribed period or in prescribed cases or circumstances, and
  - (b) either on application made for the purpose or on the Department's initiative.
- (4) On a review under this Article, the Department may—
- (a) confirm the certificate,
  - (b) (subject to paragraph (5)) issue a fresh certificate containing such variations as it considers appropriate, or
  - (c) revoke the certificate.

(5) The Department may not vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to the Department that the variation is required as a result of the Department having been supplied with incorrect or insufficient information by the person to whom the certificate is issued.

### **Appeal against a certificate or a waiver decision**

**9.—(1)** An appeal against a certificate may be made by the person to whom the certificate was issued on one or more of the following grounds—

- (a) that an amount specified in the certificate is incorrect,
  - (b) that an amount so specified takes into account—
    - (i) treatment which is not health services treatment received by the injured person, as a result of his injury, at a health services hospital,
    - (ii) ambulance services which are not health services ambulance services provided to the injured person as a result of his injury, or
    - (iii) treatment as mentioned in head (i) and ambulance services as mentioned in head (ii),
  - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) No appeal may be made until—
- (a) the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of, and
  - (b) payment of the amount specified in the certificate has been made to the Department, subject to paragraph (4) and Articles 10(5) and 11(5).
- (3) For the purposes of paragraph (2)(a), if an award of damages in respect of a claim has been made under—
- (a) paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982 (c. 53),
  - (b) section 32A(2)(a) of the Supreme Court Act 1981 (c. 54) or section 12(2)(a) of the Administration of Justice Act 1982, or
  - (c) section 51(2)(a) of the County Courts Act 1984 (c. 28),

(orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

(4) The Department may, on an application by the person to whom the certificate was issued, waive the requirement in paragraph (2)(b) that payment of the amount specified in the certificate be made before making an appeal.

(5) The Department may only grant a waiver if it appears to it that payment of the amount specified in the certificate would cause exceptional financial hardship.

(6) An appeal against a decision of the Department on an application under paragraph (4) (referred to in this Article and Articles 10 and 11 as a “waiver decision”) may be made by the person to whom the certificate was issued.

(7) Regulations may make provision—

- (a) as to the manner in which, and the time within which, an appeal against a certificate or waiver decision may be made,
- (b) as to the procedure to be followed if an appeal against a certificate or waiver decision is made,
- (c) as to the circumstances in which appeals may be consolidated, and
- (d) for the purpose of enabling an appeal against a certificate to be treated as an application for a review under Article 8.

### **Appeal tribunals**

**10.**—(1) The Department shall refer to an appeal tribunal an appeal against—

- (a) a certificate, or
- (b) a waiver decision.

(2) In determining an appeal against a certificate, the tribunal shall take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury in question.

(3) On an appeal against a certificate, the tribunal may—

- (a) confirm the amount specified in the certificate,
- (b) specify any variations which are to be made on the issue of a fresh certificate under paragraph (4), or
- (c) declare that the certificate is to be revoked.

(4) When the Department has received the decision of the tribunal on an appeal against a certificate, the Department shall in accordance with that decision—

- (a) confirm the certificate,
- (b) issue a fresh certificate, or
- (c) revoke the certificate.

(5) On an appeal against a waiver decision, the tribunal may—

- (a) confirm the decision, or
- (b) waive the requirement in question.

(6) Regulations under Article 9 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under paragraph (1).

(7) Regulations may apply any provision contained in the 1998 Order in relation to appeals under this Article to an appeal tribunal, but subject to such modifications as may be prescribed by the regulations.

(8) In this Article and Article 11 “appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part II of the 1998 Order.

### **Appeal to Social Security Commissioner**

**11.**—(1) An appeal may be made to a Commissioner against any decision of an appeal tribunal under Article 10 on the ground that the decision was erroneous in point of law.

(2) An appeal under this Article may be made by—

- (a) the Department, or
- (b) the person to whom the certificate was issued.

(3) If an appeal is made under this Article, paragraphs (7) to (13) of Article 15 of the 1998 Order apply to the appeal as they apply to an appeal under that Article (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in Article 10(8)).

(4) In a case in which paragraph (7) or (8)(b) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (3) of Article 10, paragraphs (2) to (4) of that Article apply as they apply to an appeal determined on a reference under paragraph (1)(a) of that Article.

(5) In a case in which paragraph (7) or (8)(b) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (5) of Article 10, the appeal tribunal may—

- (a) confirm the waiver decision, or
- (b) waive the requirement in question.

(6) In a case in which paragraph (8)(a) of Article 15 of the 1998 Order applies by virtue of paragraph (3) to an appeal against a decision of an appeal tribunal under paragraph (3) of Article 10, paragraph (4) of that Article applies as if the references to the decision of the tribunal on an appeal against a certificate were references to the decision of the Commissioner on an appeal under this Article.

(7) In this Article “Commissioner” has the same meaning as in section 167(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8).