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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 593**

**NATIONAL HEALTH SERVICE**

**The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006**

*Made* - - - - 13th December 2006  
*Laid before the Scottish Parliament* - - - - 15th December 2006  
*Coming into force* - - 29th January 2007

The Scottish Ministers, in exercise of the powers conferred by sections 156(1), (2) and (4), 157, 158(7), 168 and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003<sup>(1)</sup> and of all other powers enabling them in that behalf, and having consulted the Council on Tribunals and its Scottish Committee in accordance with section 8 of the Tribunals and Inquiries Act 1992<sup>(2)</sup>, and with the consent of the Secretary of State<sup>(3)</sup>, hereby make the following Regulations:

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006 and shall come into force on 29th January 2007.

(2) These Regulations extend to Scotland only.

(3) In these Regulations—

“the Act” means the Health and Social Care (Community Health and Standards) Act 2003;

“appeal” means an appeal against a certificate or an appeal against a waiver decision;

“appeal against a certificate” means an appeal, under section 157(1), against a certificate;

“appeal against a waiver decision” means an appeal, under section 157(6), against a waiver decision;

“appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998<sup>(4)</sup>;

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(1) 2003 c. 43. By section 167, the powers are exercisable in relation to Scotland by the Scottish Ministers. Section 168 is cited for the definition of “prescribed”.

(2) 1992 c. 53. Section 8 was amended by S.I.2001/3649, and Schedule 1, paragraph 41 was substituted by the Social Security Act 1998 (c. 14), Schedule 7, paragraph 121.

(3) The consent of the Secretary of State is required in terms of section 167(2) of the Act.

(4) 1998 c. 14. Section 2 was amended by the State Pensions Credit Act 2002 (c. 16), sections 11 and 21, Schedule 1, paragraphs 4 and 5 and Schedule 3. Section 3 was amended by the Employment Act 2002 (c. 22), sections 50 and 54, Schedule 6, paragraphs 1(c) and 8, Schedule 8 and the Pensions Act 2004 (c. 35), section 236 and Schedule 10, paragraph 1. Section 5 was amended

- “certificate” means a certificate issued under section 151;
- “clerk to the appeal tribunal” has the meaning ascribed in the Social Security Regulations;
- “Commissioner” has the same meaning as in Chapter 2 of Part 1 of the Social Security Act 1998;
- “compensator” means a person to whom a certificate has been issued;
- “legally qualified panel member” has the meaning ascribed in the Social Security Regulations;
- “Social Security Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(5); and
- “waiver application” is to be construed in accordance with regulation 4(1).

(4) A reference in these Regulations to a numbered section is a reference to that section of the Act.

### **Review of certificates**

2.—(1) For the purposes of section 156(1), notification of an order, judgement, minute or document referred to in that subsection is to be given to the Scottish Ministers by the compensator sending to the Scottish Ministers—

- (a) a copy of the order, judgement, minute or document concerned; and
- (b) particulars of the amount or proportion by which the damages payable in respect of the claim are to be reduced to reflect the injured person’s share in the responsibility for the injury in question.

(2) The Scottish Ministers must review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim (as defined in section 153(9)(6)) if, not later than 3 months after the claim becomes a qualifying claim, the report containing the information required by regulation 3(1)(a) (production of report) of the Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006(7) is sent by the compensator to the Scottish Ministers.

(3) Subject to paragraph (4), the Scottish Ministers may review a certificate where they are satisfied that—

- (a) a mistake (whether in computation of the amount specified or otherwise) may have occurred in the preparation of the certificate; or
- (b) the amount specified in the certificate may be excess of the amount due to the Scottish Ministers; or
- (c) incorrect or insufficient information may have been supplied to the Scottish Ministers by the person to whom the certificate was issued 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) a ground for appeal against a certificate may be satisfied.

(4) An application for a review under section 156(4)(b) must be in writing on a form approved by the Scottish Ministers(8) and sent to them not later than 3 months after—

- (a) the date of the certificate; or

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by S.I. 1999/678. Section 6 was amended by the Constitutional Reform Act 2005 (c. 4), section 15, Schedule 4, paragraphs 271 and 272, S.I. 1999/1042 and S.I. 2000/253.

(5) S.I. 1999/991.

(6) Section 153(9) was amended by the Health Act 2006 (c. 28), section 73.

(7) S.S.I. 2006/592.

(8) The approved form is obtainable from the Compensation Recovery Unit, Durham House, Washington, Tyne and Wear, NE38 7SF.

- (b) if later, the date on which the compensation payment<sup>(9)</sup> was made,

### **Information to be provided on issue of a certificate**

3. Where the Scottish Ministers issue a certificate to any person, they shall at the same time send the person a notice as to—

- (a) the grounds on which the person may appeal against the certificate;
- (b) the requirements under section 157(2) that are to be satisfied before an appeal can be made; and
- (c) the person's right under section 157(4) to apply for the requirement in section 157(2)(b) to be waived.

### **Waiver applications and appeals**

4.—(1) An application under section 157(4) for a waiver of the requirement in section 157(2)(b) that payment of the amount or amounts specified in the certificate be made before making an appeal (“a waiver application”) shall be sent to the Scottish Ministers with particulars of the exceptional financial hardship that would be caused by payment of the amount or amounts specified in the certificate.

(2) A waiver application shall be sent to the Scottish Ministers not later than—

- (a) 3 months after—
  - (i) the date on the certificate; or
  - (ii) if later, the date on which the compensation payment was made; or
- (b) if the compensator has been granted an extension of the time limit for an appeal against a certificate under regulation 7, 1 month after the date of that decision.

(3) Where the Scottish Ministers make a waiver decision<sup>(10)</sup>, the person who made the application for a waiver—

- (a) shall be given notice of the decision; and
- (b) if the application for a waiver is refused—
  - (i) shall be given notice of the person's right of appeal against the decision under section 157(6); and
  - (ii) shall be informed that, if the notice of the decision does not include a statement of the reasons for the decision, the person may, within 1 month of the date of notification of that decision, request that the Scottish Ministers provide the person with a written statement of the reasons for the decision.

(4) An appeal against a waiver decision shall be in writing on a form approved by the Scottish Ministers<sup>(11)</sup> and unless an application has been granted to extend the time for an appeal against a waiver decision under regulation 7, shall be sent to the Scottish Ministers not later than 1 month after the date of the waiver decision.

(5) An appeal against a waiver decision shall contain—

- (a) the particulars required under regulation 5(4) in relation to the appeal against the certificate which it is proposed to bring; and

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<sup>(9)</sup> See section 150(3) of the Health and Social Care (Community Health and Standards Act 2003 for the definition of compensation payment.

<sup>(10)</sup> See section 157(6) of the 2003 Act for the meaning of waiver decision.

<sup>(11)</sup> The approved forms referred to in this regulation are obtainable from the Compensation Recovery Unit, Durham House, Washington, Tyne and Wear, NE38 7SF.

- (b) particulars of the exceptional financial hardship that would be caused by payment of the amount or amounts specified in the certificate.

### **Appeals against certificates**

5.—(1) Any appeal against a certificate shall be in writing on a form approved by the Scottish Ministers(b) and unless an application has been granted to extend the time for an appeal against a certificate under regulation 7, shall be sent to the Scottish Ministers—

- (a) not later than 3 months after—
  - (i) the date of the certificate; or
  - (ii) if later, the date on which the compensation payment was made; or
- (b) where a certificate is confirmed following a review by the Scottish Ministers under section 156, not later than 3 months after the date of that confirmation; 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 an injured person and arising out of the injury or death, not later than 3 months after the date of that agreement; or
- (d) where the compensator makes a waiver application, not later than 1 month after—
  - (i) the date of the waiver decision; or
  - (ii) if the compensator appeals that decision, the date on which the appeal is decided or withdrawn.

(2) Where the points raised in an appeal against a certificate have not already been the subject of a review under section 156, the Scottish Ministers, if they think it appropriate to do so, may treat an appeal against a certificate as an application for review under section 156(4).

(3) Where the Scottish Ministers decide to treat an appeal against a certificate as an application for review under section 156(4) they must advise the applicant that they have done so and—

- (a) where the certificate is confirmed notify the applicant of that decision and treat the application as an appeal; or
  - (b) otherwise issue a fresh certificate.
- (4) Any appeal under this regulation shall contain the following particulars—
- (a) the date of the certificate in relation to which the appeal is made;
  - (b) the ground under section 157 to which the appeal relates; and
  - (c) a summary of the arguments relied on by the person making the appeal to support that person's contention that the certificate is wrong.

### **Appeals against certificates and waiver applications – General**

6.—(1) 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 regulations 4(5) or 5(4), as the case may be, the Scottish Ministers may treat that appeal as duly made.

(2) Where it appears to the Scottish Ministers that an appeal does not contain all the particulars required under regulations 4(5) or 5(4), as the case may be, they may require the person making the appeal to provide such particulars as are not included.

(3) Where paragraph (2) applies, the Scottish Ministers may extend the time specified by regulations 4(4) and 5(1) for making the appeal by a period of not more than 14 days.

(4) Where further particulars are required under paragraph (2), they shall be sent to the Scottish Ministers within such a period as the Scottish Ministers may direct.

(5) Where a person is required under paragraph (2) to provide further particulars and does not do so within the period of time specified under paragraph (4)–

- (a) the Scottish Ministers shall send a copy of the appeal together with any other relevant documents, to a legally qualified panel member; and
- (b) that panel member shall determine whether the appeal is to be treated as duly made, and shall inform the appellants, and the Scottish Ministers of that decision.

(6) The date of an appeal shall be–

- (a) the date on which all the particulars required under regulations 4(5) or 5(4), as the case may be, are received by the Scottish Ministers; or
- (b) where a legally qualified panel member determines under paragraph (5)(b) that the appeal is to be treated as duly made, the date on which the appeal was received by the Scottish Ministers.

### **Extension of time for appealing**

7.—(1) The time prescribed by regulations 4 and 5 for the making of an appeal may be extended, even though the time so prescribed may already have expired, on application by the compensator. Any application for an extension of time shall be sent to the Scottish Ministers and shall be determined by a legally qualified panel member, except that where the Scottish Ministers are satisfied that the condition in paragraph (2)(b) is satisfied they may also grant the application.

(2) An applicant must satisfy the person determining the application that–

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

(3) For the purposes of paragraph (2) it shall not be considered to be in the interests of justice to grant an application unless the person determining the application is satisfied that–

- (a) special reasons exist which are wholly exceptional and which relate to the history or facts of the case;
- (b) such special reasons have existed throughout the period beginning with the day following the expiry of the time prescribed, as the case may be, by regulations 4 or 5 for the making of an appeal and ending with the day on which the application for 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 prescribed.

(4) In determining whether there are special reasons for granting an application for an extension of time for making an appeal under paragraph (1) the person determining 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 cogent should be the special reasons on which the application is based.

(5) In determining whether facts constitute special reasons for granting an application for an extension of time for making an appeal under paragraph (1), no account shall be taken of the following–

- (a) that the applicant or anyone acting for, or advising the applicant, was unaware of or misunderstood the law applicable to the applicant's case (including ignorance or misunderstanding of any time limits imposed by regulations 4 or 5); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(6) The person who determines an application for an extension of time for making an appeal shall record a summary of the decision in such written form as has been approved by the President of appeal tribunals appointed under section 5 of the Social Security Act 1998(12).

(7) Where a decision is made under this regulation by a legally qualified panel member that member shall notify the applicant and the Scottish Ministers.

(8) Where a decision is made under this regulation by the Scottish Ministers they shall notify the applicant.

(9) Any application under paragraph (1) for an extension of time for making an appeal shall contain the following particulars—

- (a) particulars of the special reasons on which the application is based if applicable; or
- (b) the particulars required under regulation 5(4) in relation to the appeal against the certificate which it is proposed to bring; and
- (c) in the case of an application for an extension of time for making an appeal against a waiver decision, the particulars required under regulation 4(5).

(10) An application under paragraph (1) which has been refused may not be renewed.

(11) No appeal may be brought later than 1 year after the beginning of the period prescribed in regulations 4(2) or 5(1), as the case may be, or, if more than one such period is relevant, the one beginning later or latest.

### General provisions relating to the procedure for appeals

8.—(1) Where an appeal is made, the provisions of the Social Security Regulations specified in paragraph (2) shall apply in relation to the appeal as they apply to an appeal to an appeal tribunal under section 12 of the Social Security Act 1998(13), subject to the modifications to those regulations set out in paragraphs (3) to (10).

(2) The provisions referred to in paragraph (1) are—

- (a) 34 (death of a party to an appeal)(14);
- (b) 36(1) and (5) (composition of appeal tribunals)(15);
- (c) 38 (consideration and determination of appeals and referrals);
- (d) 39 (choice of hearing)(16);
- (e) 40 (withdrawal of appeal or referral)(17);
- (f) 42 (non-disclosure of medical advice or evidence)(18);
- (g) 43 (summoning of witnesses and administration of oaths);
- (h) 46 (appeals which may be struck out)(19);
- (i) 47 (reinstatement of struck out appeals)(20);
- (j) 49 (procedure at oral hearings)(21);

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(12) 1998 c. 14.

(13) 1998 c.14. Section 12 was amended by the Social Security Contributions (Transfer of Functions etc) Act 1999 (c. 2), sections 18 and 26(3), Schedule 7, paragraph 25 and Schedule 10, Part 1.

(14) S.I. 1999/991. Revoked in so far as relating to a child benefit or guardian's allowance under the Social Security Contributions and Benefits Act 1992 by S.I. 2003/916. Paragraphs 1 and (3) were amended by S.I. 1999/991.

(15) S.I. 1999/991. Amended by S.I. 1999/1466 and S.I. 2004/1596.

(16) S.I. 1999/991. Provision heading and paragraphs (1) to (4) were amended by S.I. 2004/3368.

(17) S.I. 1999/991. Paragraph (1) was amended by S.I. 1999/2570.

(18) S.I. 1999/991. Paragraphs (1) and (3) were amended by S.I. 2000/1596.

(19) S.I. 1999/991. Paragraphs (1) and (4) were amended by S.I. 2004/3368.

(20) S.I. 1999/991. Paragraphs (1) and (2) were amended by S.I. 2002/1379 and paragraph (2) was amended by S.I. 2004/3368.

(21) S.I. 1999/991. Paragraphs (6), (9), (10) and (13) were amended by S.I. 2002/1379 and paragraph (7) was amended by S.I. 2002/1379 and S.I. 2005/337.

- (k) 51 (postponement and adjournment)(22);
- (l) 53 (decisions of appeal tribunals)(23);
- (m) 54 (late application for a statement of reasons of tribunal decision)(24);
- (n) 55 (record of tribunal; proceedings)(25);
- (o) 56 (correction of accidental errors)(26);
- (p) 57 (setting aside decisions on certain grounds)(27);
- (q) 58 (application for leave to appeal to a commissioner from an appeal tribunal)(28); and
- (r) Schedule 3 (qualifications of persons appointed to the panel)(29).

(3) Regulation 38 (consideration and determination of appeals and referrals) of the Social Security Regulations shall apply as if the reference to “any provision of these Regulations” were a reference to any of the Social Security Regulations specified in paragraph (2).

(4) The provisions specified in paragraph (2) shall have effect in relation to an appeal as if–

- (a) any reference in any of those provisions to a party to the proceedings were a reference to the Scottish Ministers and to any person entitled under section 157(1) to make an appeal; and
- (b) any reference to the Secretary of State as a party to the proceedings were a reference to the Scottish Ministers.

(5) Regulation 39(1) and 39(3) (choice of hearing) shall apply as if the reference to the Secretary of State were a reference to the Scottish Ministers.

(6) Regulation 40 (withdrawal of appeal or referral) shall apply as if the reference to the Secretary of State were a reference to the Scottish Ministers.

(7) Regulation 46 (appeals which may be struck out) of the Social Security Regulations shall apply as if–

- (a) Paragraph (1)(a) were omitted; and
- (b) in paragraph (1)(b), the reference to “these Regulations” were a reference to regulations 4(5) or 5(4), as the case may be, of these Regulations.

(8) Regulations 56(1) (correction of accidental errors) and 57(1) (setting aside decisions on certain grounds) of the Social Security Regulations shall apply as if the reference to “a relevant enactment” were a reference to section 158.

(9) Regulation 58(1) (application for leave to appeal to a Commissioner from an appeal tribunal) of the Social Security Regulations shall apply as if the reference to “section 13 of the 1997 Act or under section 12 or 13” were a reference to section 159.

(10) Regulation 58(2) (Application for leave to appeal to a Commissioner from an appeal tribunal) shall apply as if the reference to the Secretary of State were a reference to the Scottish Ministers.

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(22) S.I. 1999/991. Paragraph (5) was revoked by S.I. 2002/1379.

(23) S.I. 1999/991. Paragraph (3) was amended by S.I. 1999/2677 and S.I. 2005/337, paragraph (4) was amended by S.I. 2002/1379 and S.I. 2005/337 and paragraph (4A) was inserted by 2005/337.

(24) S.I. 1999/991. Paragraph (1) was amended by S.I. 2000/1596 and S.I. 2005/337, paragraphs (6), (10), (11) and (12) were amended by S.I. 2002/1379 and paragraph (13) was amended by S.I. 2002/1379 and S.I. 2005/337.

(25) S.I. 1999/991. Paragraphs (2) to (4) were amended by S.I. 2005/337.

(26) S.I. 1999/991. Paragraph (1) was amended by S.I. 2000/1596 and S.I. 2005/337 and paragraph (2) was amended by S.I. 2005/337.

(27) S.I. 1999/991. Paragraphs (2), (3), (6) and (12) were amended by S.I. 2002/1379 and paragraph (4A) was inserted by S.I. 2005/337.

(28) S.I. 1999/991. Paragraph (1) was amended by S.I. 2002/1379 and S.I. 2005/337, paragraph (1A) was inserted by S.I. 2005/337, paragraph (2) was amended by S.I. 1999/2570, paragraph (3) was revoked by S.I. 2002/1379, paragraph (4) was amended by S.I. 2002/1379, paragraph (5) was amended by S.I. 2005/337 and paragraph (6) was amended by S.I. 2002/1379.

(29) S.I. 1999/991. Paragraphs (2) and (3) were amended by S.I. 2005/337 and paragraph (4) was amended by S.I. 2002/1379.

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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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### **Consolidation of appeals**

**9.** Where two or more appeals against certificates (whether issued by the Scottish Ministers or the Secretary of State) relate to the same injury, the legally qualified panel member may direct that the appeals be consolidated.

St Andrew's House,  
Edinburgh  
13th December 2006

*ANDREW P KERR*  
A member of the Scottish Executive



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## EXPLANATORY NOTE

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

Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 provides for a scheme for the recovery of charges in cases where an injured person who receives a compensation payment in respect of the injury has received National Health Service hospital treatment or ambulance services. The charges are specified in certificates issued by the Scottish Ministers and are payable by persons who pay compensation to the injured person.

A person to whom a certificate is issued may appeal against the certificate, provided that person pays beforehand the amounts specified in the certificate or the Scottish Ministers waive the requirement to pay. The person may also appeal against the Scottish Ministers' decision whether to waive the requirement to pay ("the waiver decision").

Regulations 2 to 9 make provision—

- (a) for the circumstances and timing of reviews by the Scottish Ministers of certificates (regulation 2);
- (b) for the Scottish Ministers to inform a person to whom a certificate is issued of particulars relating to appeals against certificates (regulation 3);
- (c) as to the manner and timing of applying for a waiver of the requirement in section 157(2) (b) to pay the amount specified in the certificate before appealing against the certificate and for appealing a waiver decision (regulation 4);
- (d) as to the manner and timing of appealing against a certificate (regulation 5);
- (e) for the general matters relating to appeals against waiver decisions or certificate (regulation 6);
- (f) as to the grounds on which, and manner by which, an application can be made for an extension of the time limits for making an appeal against a waiver decision or certificate (regulation 7);
- (g) for the application of certain provisions (modified accordingly) of the Social Security Regulations relating to procedural matters of the appeal tribunal to appeals against waiver decisions and certificates (regulation 8); and
- (h) for the consolidation of appeals against certificates relating to the same injury (regulation 9).