

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Recovery of Nhs Charges

Review and appeal

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.
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.

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

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.