



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 3

#### RECOVERY OF NHS CHARGES

##### *Review and appeal*

#### **156 Review of certificates**

- (1) The Secretary of State or the Scottish Ministers must review a certificate issued by him or them 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 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),
  - (b) 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),
  - (c) in respect of which, after the certificate is issued, a court in a country other than England and Wales, Scotland or Northern Ireland orders a reduction of damages under any provision of the law of that country which appears to the Secretary of State or the Scottish Ministers (as the case may be) to correspond to section 1 of the Law Reform (Contributory Negligence) Act 1945,
  - (d) in respect of which, after the certificate is issued, an officer of a court in England and Wales or Northern Ireland enters or seals an agreed judgement 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—

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- (i) that the action has been settled extra-judicially, and
    - (ii) the matters mentioned in paragraph (d)(i) and (ii),
  - (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 England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Secretary of State to correspond to an agreed judgement or order entered or sealed by an officer of a court in England and Wales, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii), or
  - (g) in the case of which, after the certificate is issued, a document is made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Scottish Ministers to correspond to a joint minute executed by the parties to a resulting action before a court in Scotland specifying that the action has been settled extra-judicially, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii),
 and notification of the order, judgement, minute or document has been given to the Secretary of State or the Scottish Ministers (as the case may be) in the prescribed manner.
- (2) Regulations may make provision as to the circumstances in which the Secretary of State or 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)).
- (3) If—
  - (a) the Secretary of State and the Scottish Ministers have issued certificates to a person specifying an amount (or amounts) for which that person is liable under section 150(2) in respect of the same injured person in consequence of the same injury, and
  - (b) either the Secretary of State or the Scottish Ministers subsequently adjusts or adjust the amount (or amounts) specified in the certificate issued by him or them on a review of, or an appeal against, that certificate,
 the other must review the certificate issued by him or them (as the case may be) if he is or they are satisfied that it is necessary or expedient to make consequential adjustments to that certificate.
- (4) The Secretary of State or the Scottish Ministers may review a certificate issued by him or them—
  - (a) either within the prescribed period or in prescribed cases or circumstances, and
  - (b) either on application made for the purpose or on his or their initiative.
- (5) On a review under or by virtue of this section, the Secretary of State or the Scottish Ministers may—
  - (a) confirm the certificate,
  - (b) issue a fresh certificate containing such variations as he considers or they consider appropriate, or
  - (c) revoke the certificate.
- (6) But the Secretary of State or the Scottish Ministers may not vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to him or

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them that the variation is required as a result of his or their having been supplied with incorrect or insufficient information by the person to whom the certificate is issued.

- (7) Subsections (5) and (6) of section 152 apply to certificates issued under subsection (5) (b) above as they apply to certificates issued under section 151.

#### Commencement Information

- I1** S. 156 partly in force; s. 156 in force at Royal Assent for certain purposes, see s. 199(1)(4)  
**I2** S. 156 in force at 29.1.2007 for E.W. in so far as not already in force by S.I. 2006/3397, art. 2(2)(a)  
**I3** S. 156 in force at 29.1.2007 for S. in so far as not already in force by S.S.I. 2007/10, art. 2(2)(a)

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

- (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 (or amounts) specified in the certificate is (or are) incorrect,
  - (b) that an amount (or amounts) so specified takes (or take) into account—
    - (i) treatment which is not NHS treatment received by the injured person, as a result of his injury, at a health service hospital,
    - (ii) ambulance services which are not NHS ambulance services provided to the injured person as a result of his injury, or
    - (iii) treatment as mentioned in sub-paragraph (i) and ambulance services as mentioned in sub-paragraph (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 (or amounts) specified in the certificate has been made to the Secretary of State or the Scottish Ministers (as the case may be), subject to subsection (4) and sections 158(6) and 159(5).
- (3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under or by virtue of—
- (a) section 32A(2)(a) of the [F1Senior Courts Act 1981],
  - (b) section 12(2)(a) of, or paragraph 10(2)(a) of Schedule 6 to, the Administration of Justice Act 1982 (c. 53), 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 Secretary of State or the Scottish Ministers may, on an application by the person to whom the certificate was issued, waive the requirement in subsection (2)(b) that payment of the amount (or amounts) specified in the certificate be made before making an appeal.
- (5) The Secretary of State or the Scottish Ministers may only grant a waiver if it appears to him or them that payment of the amount (or amounts) specified in the certificate would cause exceptional financial hardship.

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- (6) An appeal against a decision of the Secretary of State or the Scottish Ministers on an application under subsection (4) (referred to in this section and [F<sup>2</sup>section 158] 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) F<sup>3</sup> ...and
  - (d) for the purpose of enabling an appeal against a certificate to be treated as an application for a review under section 156.

#### Textual Amendments

- F1** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F2** Words in s. 157(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), art. 1\(1\), Sch. 3 para. 199\(a\)](#)
- F3** S. 157(7)(c) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), art. 1\(1\), Sch. 3 para. 199\(b\)](#)

#### Commencement Information

- I4** S. 157 partly in force; s. 157 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I5** S. 157 in force at 29.1.2007 for S. in so far as not already in force by [S.S.I. 2007/10, art. 2\(2\)\(a\)](#)
- I6** S. 157 in force at 29.1.2007 for E.W. in so far as not already in force by [S.I. 2006/3397, art. 2\(2\)\(a\)](#)

## 158 Appeal tribunals

- (1) The Secretary of State or the Scottish Ministers must refer to [F<sup>4</sup>the First-tier Tribunal] an appeal against—
- (a) a certificate, or
  - (b) a waiver decision.
- (2) In determining an appeal against a certificate, the tribunal must 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 or amounts specified in the certificate,
  - (b) specify any variations which are to be made on the issue of a fresh certificate under subsection (4), or
  - (c) declare that the certificate is to be revoked.
- (4) When the Secretary of State or the Scottish Ministers (as the case may be) has or have received the decision of [F<sup>5</sup>a tribunal] on an appeal against a certificate, he or they must in accordance with that decision—
- (a) confirm the certificate,
  - (b) issue a fresh certificate, or
  - (c) revoke the certificate.

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- (5) Subsections (5) and (6) of section 152 apply to certificates issued under subsection (4) (b) above as they apply to certificates issued under section 151.
- (6) On an appeal against a waiver decision, the tribunal may—
- (a) confirm the decision, or
  - (b) waive the requirement in question.

<sup>F6</sup>(7) .....

**Textual Amendments**

- F4** Words in s. 158(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 200(a)**
- F5** Words in s. 158(4) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 200(b)**
- F6** S. 158(7) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 200(c)**

**Commencement Information**

- I7** S. 158 partly in force; s. 158 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I8** S. 158 in force at 29.1.2007 for S. in so far as not already in force by [S.S.I. 2007/10](#), **art. 2(2)(a)**
- I9** S. 158 in force at 29.1.2007 for E.W. in so far as not already in force by [S.I. 2006/3397](#), **art. 2(2)(a)**

<sup>F7</sup>**159 Appeal to Social Security Commissioner**

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**Textual Amendments**

- F7** S. 159 omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 201**

**Changes to legislation:**

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