

HEALTH ACT 2006

EXPLANATORY NOTES

NHS COSTS RECOVERY

Section 73: NHS Costs Recovery

308. *Section 73* amends section 153 in Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 by substituting new wording for subsection (9) of that section. Part 3 of the 2003 Act sets out the legislative framework for expansion of the current NHS costs recovery scheme for road traffic accident cases (as set out in the Road Traffic (NHS Charges) Act 1999). The substitution changes the meaning of “qualifying claim” for the purposes of subsection 153(10) of the 2003 Act so that it no longer refers solely to claims settled by mediation, but to any claim other than those identified in subsection (3) of section 153 or described in regulations.
309. The purpose of this amendment is to allow contributory negligence (where the injured person accepts, or is found to have, an element of responsibility for the injury sustained) to be taken into account in NHS cost recovery cases where the primary compensation claim is settled by a wide range of alternative dispute resolution mechanisms, rather than only where it has been settled by mediation (or following a formal finding of contributory negligence made by a court or endorsed through certain specified court processes as described in subsection 153(3)). This means that where the amount paid in the primary compensation claim has been reduced following an agreement between the parties on contributory negligence, compensators will be able to apply to have the amount payable under the costs recovery scheme reduced by the same proportion.