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2001 CHAPTER 3

PART II

RECOVERY OF CHARGES IN CONNECTION WITH THE TREATMENT OF ROAD TRAFFIC CASUALTIES

Payment for hospital treatment

Payment for hospital treatment of traffic casualties

- 23.—**(1) This section applies if—
- (a) a person (“the traffic casualty”) has suffered injury, or has suffered injury and died, as a result of the use of a motor vehicle on a road or other public place;
 - (b) a compensation payment is made in respect of that injury or death; and
 - (c) the traffic casualty has received health services treatment at a health services hospital in respect of his injury.
- (2) The person making the compensation payment is liable to pay the appropriate health services charges to the Department in respect of the treatment.
- (3) “Compensation payment” means—
- (a) a payment made by an authorised insurer under, or in consequence of, a policy issued under Article 92 of the Road Traffic (Northern Ireland) Order 1981 (NI 1);
 - (b) a payment made by the owner of the vehicle, in a case where the vehicle is one in relation to the use of which a security under Part VIII of that Order is in force;

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- (c) a payment made by the owner of the vehicle who has made a deposit under that Part; or
 - (d) a payment made in pursuance of a compensation scheme for motor accidents.
- (4) A payment is a compensation payment whether or not it is made—
- (a) in the United Kingdom; or
 - (b) voluntarily, or in pursuance of a court order or an agreement, or otherwise.
- (5) Regulations may provide that a payment of a prescribed description is not to count as a compensation payment, either generally or in such circumstances as may be prescribed.
- (6) “Health services treatment” means any treatment (including any examination of the traffic casualty), other than—
- (a) treatment provided by virtue of Article 31 of the principal Order or paragraph 14 of Schedule 3 to the 1991 Order (accommodation and services for private patients); or
 - (b) treatment provided at a health services hospital by virtue of Article 5(4) of the principal Order (permission for use of health services accommodation or facilities in private practice).
- (7) “The appropriate health services charges” means the amount specified in a certificate of health services charges—
- (a) issued under section 24 in respect of the traffic casualty, to the person making the compensation payment; and
 - (b) in force.
- (8) Subject to subsection (9), this section applies in relation to any compensation payment made after the date on which this section comes into operation but not to one payable under a court order, or agreement, made before that date.
- (9) In its application to a compensation payment made in respect of an injury or death resulting from an incident occurring before the coming into operation of this Part, this section has effect as if in subsection (6) after the words “any treatment” there were inserted the words “as an in-patient”.
- (10) For the purposes of this Part, it is irrelevant whether a compensation payment is made with or without an admission of liability.

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Certificates of health services charges

Applications for certificates of health services charges

24.—(1) Before a person makes a compensation payment in respect of the injury or death of a traffic casualty, he may apply to the Department for a certificate under this section.

(2) If the Department receives an application under subsection (1), it shall arrange for a certificate to be issued as soon as is reasonably practicable.

(3) Such a certificate is to be known as a “certificate of health services charges” but is referred to generally in this Part as a “certificate”.

(4) A certificate may provide that it is to remain in force—

- (a) until a specified date;
- (b) until the occurrence of a specified event; or
- (c) indefinitely.

(5) A person may apply under subsection (1) for a fresh certificate from time to time.

(6) Subsection (2) does not require the Department to arrange for a fresh certificate to be issued to a person applying under subsection (5) if, when the application is received, a certificate issued to the applicant in respect of the casualty is still in force; but the Department may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate.

(7) If a certificate expires, the Department may arrange for a fresh certificate to be issued without an application having to be made.

(8) In the circumstances mentioned in subsection (9), a person who has made a compensation payment in respect of the injury or death of a traffic casualty shall apply to the Department for a certificate.

(9) The circumstances are that—

- (a) at the time the payment is made—
 - (i) no certificate has been issued to him in respect of the casualty; or
 - (ii) if such a certificate has been issued to him, it is no longer in force; and
- (b) no application for a certificate has been made by him during the prescribed period ending immediately before the day on which the compensation payment is made.

(10) An application for a certificate shall be made in the prescribed manner and, in the case of an application under subsection (8), within the prescribed period.

(11) On receiving an application under subsection (8), the Department shall arrange for a certificate to be issued as soon as is reasonably practicable.

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(12) The Department may arrange for certificates to be issued by electronic means.

Information contained in certificates

25.—(1) A certificate shall specify the amount for which the person to whom it is issued is liable under section 23(2).

(2) The amount to be specified is to be that set out in, or determined in accordance with, regulations.

(3) But if a certificate relates to a traffic casualty who has not received health services treatment at a health services hospital in respect of his injury, it shall indicate that no amount is payable to the Department by reference to that certificate.

(4) Regulations under subsection (2) may, in particular, provide—

- (a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum;
- (b) for different amounts to be specified in respect of different circumstances, including, in particular, whether or not the treatment concerned was in respect of injuries resulting from an incident occurring before 2nd July 1997;
- (c) for cases in which a traffic casualty receives treatment at two or more health services hospitals;
- (d) for cases in which liability under section 23(2) is to be apportioned between two or more persons making compensation payments in respect of the same traffic casualty.

(5) Regulations under subsection (2) may be made so as to apply to any certificate issued after the time the regulations come into operation, other than one relating to a compensation payment made before that time.

(6) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount specified in the certificate has been determined as may be prescribed, if he applies to the Department for those particulars.

Recovery of health services charges

Payment of health services charges

26.—(1) If the certificate by reference to which an amount payable under section 23(2) is determined is issued before the settlement date, that amount shall be paid before the end of the period of 14 days beginning with and including the settlement date.

(2) If the certificate by reference to which an amount payable under section 23(2) is determined is issued on or after the settlement date, that amount

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shall be paid before the end of the period of 14 days beginning with and including the day on which the certificate is issued.

(3)^{F1} “Settlement date” means the date on which the compensation payment is made.

(4) This section is subject to section 27(2).

F1 mod by SR 2001/125

Recovery of health services charges

27.—(1) This section applies if a person has made a compensation payment and either—

- (a) subsection (8) of section 24 applies but he has not applied for a certificate as required by that subsection; or
- (b) he has not made payment, in full, of any amount due under section 23(2) by the end of the period allowed under section 26.

(2) The Department may—

- (a) in a case within subsection (1)(a), issue the person who made the compensation payment with a certificate; and
- (b) in a case within subsection (1)(b), issue him with a copy of the certificate or (if more than one has been issued) the most recent one,

and, in either case, issue him with a demand that payment of any amount due under section 23(2) be made immediately.

(3) The Department may recover the amount for which a demand for payment is made under subsection (2) from the person who made the compensation payment.

(4) Any amount recoverable shall, if the county court so orders, be enforceable as if it were payable under an order of that court.

(5) A document which states that it is a record of the amount recoverable under subsection (3) is conclusive evidence that that amount is so recoverable if it is signed by a person authorised to do so by the Department.

(6) For the purposes of subsection (5), a document purporting to be signed by a person authorised to do so by the Department is to be treated as so signed unless the contrary is proved.

Reviews and appeals

Review of certificates

28.—(1) A certificate may be reviewed by the Department—

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- (a) either within the prescribed period or in prescribed cases or circumstances; and
 - (b) either on an application made for the purpose or on its own initiative.
- (2) On a review under this section, the Department may—
- (a) confirm the certificate;
 - (b) issue a fresh certificate containing such variations as it considers appropriate; or
 - (c) revoke the certificate.

Appeals against a certificate

29.—(1) An appeal against a certificate may be made by the person to whom the certificate was issued on the ground—

- (a) that an amount specified in the certificate is incorrect;
 - (b) that an amount so specified takes into account treatment which is not health services treatment received by the traffic casualty, in respect of his injury, at a health services hospital; or
 - (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 giving 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.

(3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982 (c. 53), (orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

- (4) Regulations may make provision—
- (a) as to the manner in which, and the time within which, an appeal may be made;
 - (b) as to the procedure to be followed where an appeal is made; and
 - (c) for the purpose of enabling an appeal to be treated as an application for a review under section 28.

Appeal tribunals

30.—(1) The Department shall refer an appeal to an appeal tribunal.

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(2) In determining an appeal, 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 or death in question.

(3) On an appeal, 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 subsection (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, it shall in accordance with that decision—

- (a) confirm the certificate against which the appeal was brought;
- (b) issue a fresh certificate; or
- (c) revoke the certificate.

(5) Regulations under section 29 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under subsection (1).

(6) In this section and section 31 “appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998 (NI 10).

Appeal to the court on point of law

31. Regulations may provide that an appeal lies to the High Court on any point of law arising from a decision of an appeal tribunal under section 30.

Reviews and appeals: supplementary

32.—(1) This section applies in any case in which a fresh certificate is issued as a result of a review under section 28 or an appeal.

(2) Regulations may provide that where—

- (a) a person has made one or more payments to the Department under section 23; and
- (b) in consequence of the review or appeal, it appears that the amount paid is more than the amount that ought to have been paid,

the difference shall be repaid by such person or persons as may be prescribed.

(3) Regulations may provide that where—

- (a) a person has made one or more payments to the Department under section 23; and
- (b) in consequence of the review or appeal, it appears that the amount paid is less than the amount that ought to have been paid,

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that person shall pay the difference to the Department.

- (4) Regulations under this section—
- (a) may provide for the payment by any person of any balance or the recovery from any person of any excess, and may make such provision by modifying this Part;
 - (b) may provide for the Department of Health, Social Services and Public Safety to determine any matter requiring determination under or in consequence of the regulations.

Information

Provision of information

33.—(1) This section applies if a claim for a compensation payment is made in respect of any injury suffered by, or the death of, a traffic casualty.

(2) The following persons shall give the Department such information with respect to the circumstances of the case as may be prescribed—

- (a) the person against whom the claim is made and anyone acting on behalf of that person;
- (b) anyone not within paragraph (a) who is, or is alleged to be, liable in respect of the injury or death;
- (c) the traffic casualty or, if the traffic casualty has died, his personal representative;
- (d) if the claim is not made by the traffic casualty, the person by whom it is made;
- (e) anyone acting on behalf of a person within paragraph (b), (c) or (d);
- (f) the responsible body of each health services hospital at which the traffic casualty has received health services treatment in respect of his injury.

(3) “Claim” and “person against whom the claim is made” have such meanings as may be prescribed.

(4) A person who is required to give information under this section shall do so—

- (a) in the prescribed manner; and
- (b) within the prescribed period (which in the case of a person within subsection (2)(b), (c), (d), (e) or (f) shall be a period beginning with the day on which the Department asks him for the information).

(5) Regulations under this section may, in particular, require the provision of information about any health services treatment which a traffic casualty has received at a health services hospital.

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Use of information held by the Department

34.—(1) Subsection (2) applies to information which is held—

- (a) by the Department; or
- (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (NI 12).

(2) The information—

- (a) may be used for the purposes of, or for any purpose connected with, the exercise of functions under this Part; and
- (b) may be supplied to, or to a person providing services to, the Department for use for those purposes.

(3) Subsection (4) applies to information which is held—

- (a) by the Department; or
- (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under this Part.

(4) The information—

- (a) may be used for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (NI 12); and
- (b) may be supplied to, or to a person providing services to, the Department for use for those purposes.

Payments to hospitals

Payment of health services charges to hospitals

35.—(1) If the Department receives a payment of health services charges under section 23(2), it shall pay the amount received to the responsible body of the health services hospital at which the treatment, in respect of which the payment was made, was given.

(2) If a payment received under section 23(2) relates to treatment at more than one health services hospital, the Department shall, for the purposes of subsection (1), divide the payment among the responsible bodies of the hospitals concerned in such manner as it considers appropriate.

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(3) Subsection (1) does not apply to any amount received by the Department under section 23(2) which it is required to repay in accordance with regulations under section 32(2).

(4) Regulations under this section may—

- (a) make provision for the manner in which and intervals at which any payments due under this section are to be made;
- (b) make provision for cases where the responsible body of the health services hospital concerned has ceased to exist (including provision modifying this Part).

Miscellaneous and general

Regulations governing payments into court, etc.

36.—(1) Regulations may make provision (including provision modifying this Part)—

- (a) for cases to which section 23(2) applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of the same injury or death;
- (b) for cases to which section 23(2) applies in which an agreement is entered into for the making of—
 - (i) periodical compensation payments (whether of an income or capital nature); or
 - (ii) periodical compensation payments and lump sum compensation payments;
- (c) for cases in which the compensation payment to which section 23(2) applies is an interim payment of damages which a court orders to be repaid.

(2) Regulations may make provision modifying the application of this Part in relation to cases in which a payment into court is made and, in particular, may provide—

- (a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment;
- (b) for application for, and issue of, certificates.

Interpretation of this Part

37. In this Part—

“appeal” means an appeal under section 29;

“appropriate health services charges” has the meaning given in section 23(7);

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“authorised insurer” has the meaning given in Article 101 of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

“certificate” means a certificate of health services charges issued under section 24;

“compensation payment” has the meaning given in section 23;

“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to be caused, by uninsured or unidentified persons;

“the Department” means the Department for Social Development;

“health services hospital” means a hospital which provides health services;

“health services treatment” has the meaning given in section 23(6);

“motor vehicle” has the meaning given in Article 3(1) of the Road Traffic (Northern Ireland) Order 1995 (NI 18) (read with Articles 4(1), 5, 6 and 105 of that Order);

“owner” has the meaning given in Article 2(2) of the Road Traffic (Northern Ireland) Order 1995;

“regulations” means regulations made by the Department of Health, Social Services and Public Safety;

“responsible body” in respect of a health services hospital, means—

- (a) in the case of a hospital vested in an HSS trust, the trust; and
- (b) in any other case, the body responsible for the management of the hospital;

“road” has the meaning given in Article 2(2) of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

“traffic casualty” has the meaning given in section 23(1).

Consequential amendments

38.—(1) Article 99 of the Road Traffic (Northern Ireland) Order 1981 (NI 1) (liability of insurers, etc., for expenses of hospital treatment) shall cease to have effect.

(2) In Article 101 of that Order (meaning of “authorised insurer”), in paragraph (2)—

- (a) after “purposes of this Part” there shall be inserted “or Part II of the Health and Personal Social Services Act (Northern Ireland) 2001”;
- (b) for the words from “Article 99” to “treatment” there shall be substituted “section 23 of the Health and Personal Social Services Act (Northern Ireland) 2001 (payment for hospital treatment of traffic casualties)”.

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