Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No. (N.I.)

NORTHERN IRELAND

The Recovery of Health Services Charges (Northern Ireland) Order 2006

Made - - - - 2006
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2006

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Introductory

Title and commencement

1.—(1) This Order may be cited as the Recovery of Health Services Charges (Northern Ireland) Order 2006.

(2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Department of Health, Social Services and Public Safety may by order appoint.

(3) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order–

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);

"the 1998 Order" means the Social Security (Northern Ireland) Order 1998 (NI 10);

"compensation payment" has the meaning given in Article 3;

"the Department" means the Department for Social Development;

"health services ambulance services" means ambulance services provided under Article 10(1) of the 1972 Order;

"health services hospital" means a hospital which provides health services;

"health services treatment" has the meaning given in Article 3(7);

"injured person" has the meaning given in Article 3(1);

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department of Health, Social Services and Public Safety.

(3) Except where any provision of this Order otherwise provides, any word or expression to which a meaning is assigned by Article 2(2) of the 1972 Order has the same meaning in this Order as in that Order.

Health services charges

Liability to pay health services charges

3.—(1) This Article applies if–

(a) a person makes a compensation payment to or in respect of any other person (the "injured person") in consequence of any injury, whether physical or psychological, suffered by the injured person, and

(b) the injured person has–

(i) received health services treatment at a health services hospital as a result of the injury,

(ii) been provided with health services ambulance services as a result of the injury for the purpose of taking him to a health services hospital for health services treatment (unless he was dead on arrival at that hospital), or

(iii) received treatment as mentioned in head (i) and been provided with ambulance services as mentioned in head (ii).

(2) The person making the compensation payment is liable to pay the relevant health services charges in respect of the treatment or ambulance services to the Department.

(3) "Compensation payment" means a payment, including a payment in money's worth, made–

(a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury, or

(b) in pursuance of a compensation scheme for motor accidents,

but does not include a payment mentioned in Schedule 1.

(4) Paragraph (1)(a) applies–

(a) to a payment made–

(i) voluntarily, or in pursuance of a court order or an agreement, or otherwise, and

(ii) in the United Kingdom or elsewhere, and

(b) if more than one payment is made, to each payment.

(5) "Injury" does not include any disease.

(6) Nothing in paragraph (5) prevents this Order from applying to–

(a) treatment received as a result of any disease suffered by the injured person, or

(b) ambulance services provided as a result of any disease suffered by him,

if the disease in question is attributable to the injury suffered by the injured person (and accordingly that treatment is received or those services are provided as a result of the injury).

(7) "Health services treatment" means any treatment (including any examination of the injured person) other than–

(a) treatment provided by virtue of Article 31 of the 1972 Order or paragraph 14 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1) (accommodation and services for private patients),

(b) treatment provided at a health services hospital by virtue of Article 5(4) of the 1972 Order (permission for use of health services accommodation or facilities in private practice), or

(c) treatment provided by virtue of–

(i) Article 15B, 56 or 57 of the 1972 Order (primary medical services), or

(ii) Article 61 of the 1972 Order (general dental services).

(8) "Relevant health services charges" means the amount specified in a certificate of health services charges–

(a) issued under this Order, in respect of the injured person, to the person making the compensation payment, and

(b) in force.

(9) "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 have been caused, by uninsured or unidentified persons.

(10) Regulations may amend Schedule 1 by omitting or modifying any payment for the time being specified in that Schedule.

(11) This Article applies in relation to any injury which occurs on or after the date on which this Article comes into operation.

(12) For the purposes of this Order, it is irrelevant whether a compensation payment is made with or without an admission of liability.

Certificates of health services charges

Applications for certificates of health services charges

4.—(1) Before a person makes a compensation payment in consequence of any injury suffered by an injured person, he may apply for a certificate of health services charges (in this Order referred to as "a certificate") to the Department.

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

(3) 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.

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

(5) Paragraph (2) does not require the Department to arrange for a fresh certificate to be issued to a person applying under paragraph (4) if, when the application is received, a certificate issued to the applicant in respect of the injured person 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.

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

(7) In the circumstances mentioned in paragraph (8), a person who has made a compensation payment in consequence of an injury suffered by an injured person shall apply for a certificate to the Department.

(8) The circumstances are that–

(a) at the time the payment is made by the person–

(i) no certificate has been issued to him in respect of the injured person, 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.

(9) An application for a certificate shall be made in the prescribed manner and, in the case of an application under paragraph (7), within the prescribed period.

(10) On receiving an application under paragraph (7), the Department shall arrange for a certificate to be issued as soon as is reasonably practicable.

Information contained in certificates

5.—(1) A certificate shall specify the amount for which the person to whom it is issued is liable under Article 3(2).

(2) The amount to be specified is to be that set out in, or determined in accordance with, regulations, reduced if applicable in accordance with paragraph (3) or regulations under paragraph (10).

(3) If a certificate relates to a claim made by or on behalf of an injured person–

(a) in respect of which a court in Northern Ireland has ordered a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),

(b) in respect of which a court in England and Wales or Scotland has ordered a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),

(c) in respect of which a court in a country other than Northern Ireland, England and Wales or Scotland has ordered a reduction of damages under any provision of the law of that country which appears to the Department to correspond to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948,

(d) in respect of which an officer of a court in Northern Ireland or England and Wales has entered or sealed an agreed judgment 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 the parties to any resulting action before a court in Scotland have executed a joint minute which specifies–

(i) that the action has been settled extra-judicially, and

(ii) the matters mentioned in sub-paragraph (d)(i) and (ii), or

(f) in respect of which a document has been made under any provision of the law of a country other than Northern Ireland, England and Wales or Scotland–

(i) which appears to the Department to correspond to an agreed judgment or order entered or sealed by an officer of a court in Northern Ireland, and

(ii) which specifies the matters mentioned in sub-paragraph (d)(i) and (ii),

the amount specified in the certificate is to be that which would be so specified apart from this paragraph, reduced by the same proportion as the reduction of damages.

(4) If a certificate relates to an injured person who has not received health services treatment at a health services hospital or been provided with health services ambulance services as a result of the injury, it shall indicate that no amount is payable to the Department by reference to that certificate.

(5) Regulations under paragraph (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 or areas,

(c) for cases in which an injured person receives treatment at two or more health services hospitals,

(d) for cases in which an injured person receives treatment at one or more health services hospitals and is provided with health services ambulance services,

(e) for cases in which liability under Article 3(2) is to be apportioned between two or more persons making compensation payments to or in respect of the same injured person in consequence of the same injury,

(f) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review under Article 8 or an appeal under Article 9 or 11,

(g) for any matter requiring determination under or in consequence of the regulations to be determined by the Department,

and in the case of sub-paragraph (e) may make such provision by modifying this Order.

(6) Any reference in paragraph (5)(a) or (b) to any amount specified in a certificate is to the amount which would be so specified apart from paragraph (3) or regulations under paragraph (10).

(7) Regulations under paragraph (2) which provide for cases mentioned in paragraph (5)(e) may (among other things) provide in the case of each compensator for–

(a) determining, or re-determining, the amount for which he is liable under Article 3(2),

(b) giving credit for amounts already paid, and

(c) the payment by any person of any balance or the recovery from any person of any excess.

(8) Regulations under paragraph (2) which provide for cases mentioned in paragraph (5)(f) may (among other things) provide in the case of any compensator for the matters mentioned in sub-paragraphs (b) and (c) of paragraph (7).

(9) For the purposes of paragraph (10), a claim made by or on behalf of an injured person is a qualifying claim if–

(a) it does not fall within paragraph (3) or within any other description of claim specified in regulations, and

(b) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question.