

STATES OF JERSEY



DRAFT MOTOR TRAFFIC (THIRD- PARTY INSURANCE) (COST RECOVERY) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 13th December 2012
by the Minister for Health and Social Services

STATES GREFFE



Jersey

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REPORT

In November 2011 the States Assembly unanimously voted for P.134/2011, an amendment to the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948, that enabled cost recovery charges for hospital and ambulance treatment, resulting from road traffic accidents, to be varied. The aim of P.134/2011 was to ensure that the costs recovered more accurately reflected the costs incurred by the Health and Social Services Department (HSSD).

These Regulations are made under that amended Law and set out the procedures for the recovery of those costs. The costs –

- will only be recovered in the event of an injured person making a successful claim for damages against another person's third-party motor insurance;
- will only be levied on the insurance company not the individual. If there is not a successful third-party insurance claim, there is no charge. Pedestrians, cyclists and other non-insured road users who are injured, or have caused injury, will not be liable for costs;
- are already accounted for in the insurance premiums paid by Jersey residents as their premiums are weighted by insurance providers on the basis of UK hospital charges (see below);
- will be subject to maximum amounts to be prescribed by Order of the Minister for Health and Social Services.

Prior to the amendment to the Law, as set out in P.134/2011, HSSD could only recoup some of the costs incurred in treating patients injured in road traffic accidents if they make a claim through their motor insurers. Those costs were set at a maximum of £2,000 for an in-patient and £200 for an out-patient, with no facility to recoup ambulance costs. This is well below the costs incurred, and well below UK hospital cost recovery limits (UK costs are set at c. £44,000 for in-patient, £600 for out-patient, and £181 for ambulance services).

Financial and manpower implications

The financial benefit of cost recovery income for HSSD is expected to be in the region of £100,000 to £250,000 per annum, based on the Minister for Health and Social Services making an Order which sets the maximum charges in line with current UK tariff. The costs of processing costs recovery is anticipated to be in the region of £2,400 per year.

The Association of Insurance Brokers predicts that the financial impact on motor insurance policy-holders will be nil, as Jersey premiums are, in effect, already loaded for the UK tariff.

Explanatory Note

These Regulations set out procedures to be followed for the recovery of the costs of treating a person injured in, or who dies following, a road traffic accident. The recovery of the costs depends upon an injured person (or his or her personal representative) making a successful claim for damages in respect of the accident and such damages being made against another person's third-party motor insurance. The Regulations are made under, and supplement, Article 3 of the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948 (the "principal Law").

Regulation 1 provides for the interpretation of expressions used in the draft Regulations. In particular –

‘Ambulance services’ means such services provided by or on behalf of the Minister for Health and Social Services (the “Minister”).

‘Authorized insurer’ is defined in the principal Law as an assurance company or underwriter who is approved under the principal Law to issue third party insurance. The expression includes any person deemed, by an Order made by the Minister for Transport and Technical Services under Article 17 of the principal Law, to be an authorized insurer in a case where a visitor to Jersey is insured by a policy issued elsewhere in the British Islands or by an international motor insurance card issued under the authority of the Motor Insurers’ Bureau or the Foreign Bureau (which give effect to international arrangements for the insurance of motorists against third party risks when abroad).

‘Compensation payment’ means a payment made by an authorized insurer in respect of death or injury arising from a road traffic accident. It does not matter whether the payment is made pursuant to a court order or a voluntary settlement.

‘HSS treatment’ means in-patient or out-patient treatment provided at a hospital by or on behalf of the Minister to a person injured in a road traffic accident.

‘Injured person’ means a person who is injured in or dies following a road traffic accident.

‘Settlement date’ means the day a compensation payment is made.

Regulation 2 empowers the Minister to delegate all or any of his or her functions under these Regulations. The delegation may be to any person.

Regulation 3 gives an authorized insurer the right to apply to the Minister for a certificate of expenses. The application may be made at any time before a compensation payment is made to or in respect of an injured person. A certificate of expenses is a statement of the cost of the HSS treatment and ambulance services provided, to date, to an injured person. An authorized insurer may apply for a certificate on more than one occasion. This would be appropriate if the injured person is still receiving treatment at the time a certificate is first issued.

Regulation 4 imposes an obligation on an authorized insurer to apply for a certificate of expenses once a compensation payment has been made. The obligation arises if the authorized insurer has not previously applied for a certificate or has applied, but the

certificate has expired. The obligation requires the authorized insurer to make the application within 14 days after the settlement date.

Regulation 5 specifies the information that must be contained in a certificate of expenses.

Regulation 6 provides that the certificate of expenses must specify the amount that the authorized insurer is required to pay in respect of an injured person.

Regulation 7 describes the amount that the authorized insurer is required to pay. The costs are the costs of HSS treatment and ambulance services. The recoverable costs are subject to maximum amounts, and an overall maximum amount, that will be prescribed by Order of the Minister. The Schedule to these draft Regulations, described below, contains further provision as to how the recoverable costs are to be calculated.

Regulation 8 entitles an authorized insurer to ask the Minister for further information about the certificate, such as dates of admission to and discharge from hospital of the injured person.

Regulation 9 specifies when the expenses due from the authorized insurer must be paid. If, on the settlement date, the authorized insurer already has a certificate of expenses that is in force, the expenses must be paid within 14 days following the settlement date. Otherwise, the authorized insurer is obliged to apply for a certificate under Regulation 4, and the expenses must then be paid within 14 days following the issue of the certificate.

Regulation 10 specifies the steps that may be taken if an authorized insurer who has made a compensation payment either fails to apply for a certificate of expenses or fails to pay the expenses within the 14 day period required by Regulation 9. The Minister may, of his or her own volition, issue a certificate of expenses or, as the case requires, issue a copy of the certificate previously issued, and make a demand for immediate payment. Such a demand is enforceable as if it were a court order, but this does not prevent the Minister applying to the court for an order condemning the authorized insurer to pay the amount due.

Regulation 11 sets out circumstances in which the Minister must review a certificate of expenses. The first of these is if a court in Jersey orders a reduction in the injured person's damages, by reason of the injured person's contributory negligence. The second is if court proceedings, whether in Jersey or elsewhere, are settled by agreement that provides for a reduction in damages due to contributory negligence. The Minister must be provided with satisfactory proof of the court order or agreed settlement.

The time limit for requesting a review of a certificate is 3 months following the date of the certificate or, if later, the date the compensation payment has been made.

Regulation 11 also allows the Minister to review a certificate if he or she believes it contains an error, claims an excessive amount or contains incorrect or insufficient information.

Regulation 12 allows an authorized insurer to appeal against a certificate. There are 3 grounds for appeal – that the expenses claimed are incorrect; that the claim includes treatment or ambulance services that are not HSS treatment or ambulance services; or that the expenses are not yet payable, because no compensation payment has yet been made.

An appeal against a certificate cannot be made until the claim giving rise to the compensation payment has been settled and the authorized insurer has paid the expenses due under the certificate. The latter requirement may be waived by the Minister in a case of exceptional hardship.

An appeal against a certificate must be made within the period of 3 months beginning with the day that an appeal may first be made. If the appeal has not been preceded by a review under Regulation 11, the Minister may treat the appeal as an application for review.

Regulation 13 requires the Minister to refer an appeal to the Royal Court. The Royal Court may uphold the amounts in the certificate, direct the Minister to vary the certificate or direct the Minister to revoke the certificate. In the context of this Regulation “Royal Court” means the Royal Court as constituted, for the purposes of this Regulation, in accordance with rules of court.

Regulation 14 allows an appeal to the Royal Court, on a point of law, against a decision under Regulation 13. Again, “Royal Court” means the Royal Court as appropriately constituted, in accordance with rules of court, to hear the appeal.

Regulation 15 imposes requirements to inform the Minister when a claim for compensation is made on behalf of an injured person. The driver, and anyone acting for the driver, must provide information about the accident to the Minister. The Minister may also request information from the driver, from the person making the claim or from anyone acting for either of them.

Regulation 16 makes provision as to which date is to be taken to be the settlement date in a case where damages are to be paid, wholly or partly as periodical payments. In such a case, the date of the court order for periodical payments or any agreed settlement to that effect is taken to be the settlement date.

Regulation 17 provides for a case where an interim payment of damages is made and, as a consequence, an interim payment of expenses is made to the Minister, but a court subsequently orders the reimbursement of the interim payment of damages. In such a case, the Minister must repay the expenses.

Regulation 18 provides for a case where a payment is made into court. Such a payment is only treated as a compensation payment if and when the payment is accepted by the injured person or is made, in accordance with a court order, in satisfaction of a claim.

Regulation 19 imposes an obligation on the Minister to refund expenses paid by an authorized insurer where it is established, whether by re-determination, review or appeal, that the authorized insurer has paid too much.

Regulation 20 requires an authorized insurer to pay any shortfall where it is established, whether by re-determination, review or appeal, that the insurer has paid too little.

Regulation 21 requires the Minister to send out a corrective statement of expenses where there has been an overpayment or underpayment by an authorized insurer.

Regulation 22 makes it clear that expenses recovered by the Minister are income of the Health and Social Services Department.

Regulation 23 provides for the citation of the Regulations and their commencement 7 days after they are made by the States. The Regulations do not apply in a case where the road traffic accident occurred before these Regulations commence.

The *Schedule* supplements Regulation 7, regarding the expenses that may be recovered by the Minister.

Paragraph 1 makes further provision as to the amounts and nature of the expenses incurred by the Minister that may be recovered. The cost of conveying a person to hospital by ambulance may be recovered. The costs of hospital treatment may be recovered, whether the cost of out-patient treatment or the cost of in-patient treatment, calculated by reference to the number of days for which the injured person is in hospital. The aggregate costs cannot exceed the maximum amount that will be prescribed by Order of the Minister.

Paragraph 2 describes treatment costs that may not be recovered by the Minister. These are costs of treatment provided in a private hospital, and the cost of any other treatment which is not funded by the Minister.

Paragraph 3 is concerned with a case where an authorized insurer makes an earlier and a later compensation payment in respect of an injury. Both payments will trigger the issue of a certificate of expenses but the later certificate must take into account any expenses already recovered from the authorized insurer under the earlier certificate.

Paragraph 4 is concerned with a case where the injured person is an overseas visitor who is liable to pay for his or her HSS treatment and ambulance services. If that person's claim for damages includes an amount to reimburse the person for the cost of those services, the certificate of expenses issued by the Minister must show the costs as nil. That is to say, the Minister cannot recover the expenses from both the overseas visitor and the authorized insurer.

Paragraph 5 makes it clear that a certificate may only include the cost of HSS treatment and ambulance services provided before the certificate is issued. Further, if a certificate is issued after the settlement date, the certificate may only include the cost of HSS treatment and ambulance services provided before the settlement date.

Paragraph 6 provides for the calculation of the expenses that may be recovered in a case where the damages awarded to the injured person in proceedings are reduced by a percentage that takes account of his or her contributory negligence. In such a case the expenses that the Minister may recover are reduced by the same percentage.

Paragraph 7 provides for the same reduction in expenses in a case of contributory negligence, where the amount of damages paid to the injured person is settled without recourse to proceedings.

Paragraph 8 provides for a case where the accident was the fault of more than one person. In such a case, the liability to pay the expenses is apportioned between the authorized insurers according to the respective liabilities of the persons insured by them for the accident.



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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 3(4) of the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“ambulance services” means road ambulance services provided by or on behalf of the Minister;

“authorized insurer” includes any person deemed, by Order made under Article 17(f) of the Law, to be an authorized insurer for the purposes of the whole Law or Article 3(2) to (4);

“compensation payment” means a payment made (whether or not with an admission of liability) by an authorized insurer, under or in consequence of a policy issued under the Law, in respect of the death of or bodily injury to any person arising out of the use of a motor vehicle on a road;

“hospital” has the same meaning as in Article 3(3) of the Law;

“HSS treatment” means treatment provided by or on behalf of the Minister to any injured person at a hospital, whether as an in-patient or as an out-patient, in respect of the person’s bodily injury arising out of the use of a motor vehicle on a road, and includes any examination of the injured person;

“injured person” means a person whose death or bodily injury arises out of the use of a motor vehicle on a road and who receives treatment at a hospital, whether as an in-patient or as an out-patient, in respect of the injury;

“Law” means the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948²;

“Minister” means the Minister for Health and Social Services;

“settlement date” means the day on which a compensation payment is made.

2 Delegation of functions of Minister

- (1) The Minister may appoint a person to discharge all or any of the functions of the Minister under these Regulations.
- (2) Where a person is appointed under paragraph (1), a reference to the Minister in these Regulations, in connection with the function to be discharged by that person, is to be read as a reference to that person.

3 Right to apply for certificate of expenses before compensation payment is made

- (1) Before making a compensation payment in consequence of any injury suffered by an injured person, an authorized insurer may apply to the Minister for a certificate of expenses.
- (2) The Minister must, upon receipt of an application under paragraph (1), 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) An authorized insurer may apply under paragraph (1) for a fresh certificate from time to time.
- (5) Paragraph (2) does not require the Minister to arrange for a fresh certificate to be issued to an authorized insurer 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 Minister may arrange for a fresh certificate to be issued so as to have effect upon the expiry of the current certificate.
- (6) If a certificate expires, the Minister may arrange for a fresh certificate to be issued without an application having to be made.

4 Obligation to apply for certificate of expenses after compensation payment is made

- (1) In the circumstances mentioned in paragraph (2), an authorized insurer who has made a compensation payment in consequence of an injury suffered by an injured person must apply to the Minister for a certificate of expenses.
- (2) The circumstances are that –
 - (a) at the time the payment is made by the authorized insurer –
 - (i) no certificate has been issued to him or her in respect of the injured person, or

- (ii) if such a certificate has been issued to him or her, it is no longer in force; and
 - (b) no application for a certificate has been made by the authorized insurer during the period of 28 days ending immediately before the day on which the compensation payment is made.
- (3) An application under paragraph (1) must be made not later than 14 days after the date on which the compensation payment is made.

5 Particulars to be contained in application for certificate of expenses

An application for a certificate of expenses must contain the following particulars –

- (a) the full name and address of the injured person;
- (b) the date of birth and, where known, the social security registration number of the person;
- (c) the date on which the injury occurred;
- (d) the nature of the injury;
- (e) the name and address of any hospital at which the injured person received HSS treatment in respect of his or her injury;
- (f) where the authorized insurer applying for the certificate has made a compensation payment in respect of the injury –
 - (a) the date on which the compensation payment was made; and
 - (b) if the injured person was an overseas visitor, whether the compensation payment included an amount in respect of costs for the provision of HSS treatment and ambulance services for which the injured person was charged and, if so, documentary evidence of payment of that amount;
- (g) where the certificate applied for relates to a claim to which any of the circumstances specified in paragraph 6 of the Schedule applies –
 - (i) a statement of the proportion by which the damages payable in respect of the claim are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and
 - (ii) a copy of the order, judgment, minute or document which provides for that reduction; and
- (h) where the certificate applied for relates to a claim described in paragraph 7 of the Schedule, the report referred to in that paragraph.

6 Information to be contained in or with certificate of expenses

- (1) A certificate of expenses must specify the amount (or amounts) for which the authorized insurer to whom it is issued is liable under Article 3(2) of the Law.
- (2) Where the Minister arranges for the issue of a certificate of expenses to a person the Minister shall, at the same time, arrange for a notice to be sent to the person as to the provisions in Regulation 12(1), (2) and (4).

7 Determination of amount of expenses

The amount (or amounts) to be specified in a certificate is (or are) to be the expenses described in Article 3(2A) of the Law, determined, subject to the maximum amounts prescribed under Article 3(2B) of the Law, in accordance with paragraphs 1 to 5 of the Schedule and, if applicable, reduced in accordance with paragraph 6, 7 or 8 of the Schedule.

8 Right to particulars of how expenses have been determined

- (1) An authorized insurer to whom a certificate is issued may apply to the Minister for the particulars specified in paragraph (2) in respect of the certificate.
- (2) The Minister shall provide the following particulars to an authorized insurer who has applied under paragraph (1) in respect of a certificate –
 - (a) in respect of ambulance services counted for the purposes of determining any amount in the certificate –
 - (i) the date on which the services were provided, and
 - (ii) the name and address of any hospital to which the injured person was taken; and
 - (b) in respect of treatment counted for the purposes of determining any amount in the certificate –
 - (i) the name and address of the hospital at which that treatment took place, and
 - (ii) whether the injured person was admitted to any hospital and if so, the number of days of admission counted at each hospital.

9 Time by which expenses must be paid

- (1) If the certificate by reference to which an amount payable under Article 3(2) of the Law is determined is issued before the settlement date, that amount must be paid before the end of the period of 14 days beginning with the settlement date.
- (2) If the certificate by reference to which an amount payable under Article 3(2) of the Law is determined is issued on or after the settlement date, that amount must be paid before the end of the period of 14 days beginning with the day on which the certificate is issued.
- (3) This Regulation is subject to Regulation 10(2).

10 Recovery of expenses

- (1) This Regulation applies if an authorized insurer has made a compensation payment and either –
 - (a) the authorized insurer is required by Regulation 4(1) to apply for a certificate, but has not done so; or

-
- (b) the authorized insurer has not made payment, in full, of any amount due under Article 3(2) of the Law by the end of the period allowed by Regulation 9.
- (2) The Minister may –
- (a) in a case within paragraph (1)(a), issue the authorized insurer with a certificate; and
 - (b) in a case within paragraph (1)(b), issue the authorized insurer with a copy of the certificate or (if more than one certificate has been issued) the most recent certificate,
- and, in either case, issue the authorized insurer with a demand that payment of any amount due under Article 3(2) of the Law be made immediately.
- (3) The Minister may recover the amount for which a demand for payment is made under paragraph (2) from the authorized insurer.
- (4) A demand for payment made under paragraph (2) is enforceable as if it were an order of a court in Jersey condemning a defendant to pay the amount.
- (5) Paragraph (4) does not prevent the Minister applying to a court in Jersey for an order of the court condemning an authorized insurer to pay an amount due under a certificate.
- (6) A document which states that it is a record of an amount recoverable under paragraph (3) is conclusive evidence that the amount is so recoverable if it is signed by a person authorized to do so by the Minister.
- (7) For the purposes of paragraph (6) a document purporting to be signed by a person authorized to do so by the Minister is to be treated as so signed unless the contrary is proved.

11 Review of certificate of expenses

- (1) The Minister must review a certificate that he or she has issued 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 orders a reduction in damages in accordance with Article 4 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960³;
 - (b) in respect of which, after the certificate is issued, an officer of a court enters or seals 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; or
 - (c) in respect of which, after the certificate is issued, a document is made under any provision of the law of a country outside Jersey –
 - (i) which appears to the Minister to correspond to an agreed judgment or order entered or sealed by an officer of a court in Jersey, and

-
- (ii) which specifies the matters mentioned in subparagraph (b)(i) and (ii),
- and notification of the order, judgment or document has been given to the Minister in accordance with paragraph (2).
- (2) Notice of an order, judgment, minute or document must be given to the Minister by sending to the Minister –
- (a) a copy of the order, judgment, minute or document concerned; and
- (b) particulars of the proportion by which the damages payable in respect of the claim are to be reduced to reflect the injured person's share in the responsibility for the injury in question.
- (3) The Minister may review a certificate that he or she has issued, either on an application made for the purpose or on his or her initiative, where the Minister is satisfied that –
- (a) a mistake (whether in computation of the amount specified or otherwise) may have occurred in the preparation of the certificate;
- (b) the amount specified in the certificate may be in excess of the amount due to the Minister;
- (c) incorrect or insufficient information may have been supplied to the Minister by the person to whom the certificate was issued and, in consequence, the amount specified in the certificate was less than it would have been had the information supplied been correct or sufficient; or
- (d) a ground for appeal may be satisfied.
- (4) An application for a review of a certificate must be in writing, on a form approved by the Minister and sent to the Minister not later than 3 months after –
- (a) the date on the certificate; or
- (b) if later, the date on which the compensation payment was made.
- (5) On a review under or by virtue of this Regulation, the Minister may –
- (a) confirm the certificate;
- (b) issue a fresh certificate containing, subject to paragraph (6), such variations as the Minister considers appropriate; or
- (c) revoke the certificate.
- (6) The Minister may not, under paragraph (5)(b), vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to the Minister that the variation is required as a result of his or her having been supplied with incorrect or insufficient information by the authorized insurer to whom the certificate is issued.

12 Appeal against a certificate or a waiver decision

- (1) An authorized insurer to whom a certificate has been issued may appeal to the Minister against the certificate on one or more of the following grounds –

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- (a) that an amount (or amounts) specified in the certificate is (or are) incorrect;
 - (b) that an amount (or amounts) specified in the certificate takes (or take) into account –
 - (i) treatment which is not HSS treatment received by the injured person, as a result of his or her injury, at a hospital,
 - (ii) ambulance services which are not ambulance services provided for the injured person as a result of his or her injury, or
 - (iii) treatment as mentioned in clause (i) and ambulance services as mentioned in clause (ii);
 - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) An appeal may not be made until –
 - (a) the claim against the authorized insurer 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 Minister or the requirement to pay the amount has been waived under paragraph (4).
 - (3) For the purposes of paragraph (2)(a), if a provisional award of damages has been made under or by virtue of Article 3 of the Administration of Justice (Interim Payments and Provisional Damages (Jersey) Law 1993⁴, the claim is to be treated as having been finally disposed of.
 - (4) The Minister may, on an application by the authorized insurer to whom the certificate has been issued, waive the requirement in paragraph (2)(b) that the amount (or amounts) specified in the certificate be paid to the Minister before the appeal is made.
 - (5) An application under paragraph (4) must be made no later than –
 - (a) 3 months after the date on the certificate or, if later, the date on which the compensation payment was made; or
 - (b) if the authorized insurer has been granted an extension of the time limit for an appeal against a certificate, one month after the date of that decision.
 - (6) The Minister may only grant a waiver if it appears to the Minister that payment of the amount (or amounts) specified in the certificate would cause exceptional hardship.
 - (7) An appeal against a decision of the Minister on an application under paragraph (4) (referred to in this Regulation and Regulations 13 and 14 as a “waiver decision”) may be made by the authorized insurer to whom the certificate has been issued.
 - (8) An appeal against a waiver decision must be made within the period of 28 days beginning with the day on which the Minister refuses to grant the waiver.

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- (9) An appeal against a certificate must be made to the Minister within the period of 3 months beginning with the first day on which, pursuant to paragraph (2), the appeal may be made.
 - (10) The Minister may treat an appeal as made in time, even though the time specified in paragraph (9) has expired, if the Minister is satisfied that it is in the interests of justice to do so.
 - (11) Where the points raised in an appeal against a certificate have not already been the subject of a review under Regulation 11, the Minister may, if he or she thinks it appropriate to do so, treat the appeal as an application for review under Regulation 11(4).
 - (12) Where the Minister decides to treat an appeal as an application for review under Regulation 11(4), the Minister must –
 - (a) where the certificate is confirmed, notify the applicant of that decision; or
 - (b) otherwise issue a fresh certificate.

13 Appeals under Regulation 12

- (1) This Regulation applies to an appeal against a certificate on a ground specified in Regulation 12(1) and an appeal against a waiver decision.
- (2) The Minister must refer the appeal to the Royal Court.
- (3) In determining an appeal against a certificate, the Royal Court 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.
- (4) On an appeal against a certificate, the Royal Court 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 paragraph (5); or
 - (c) declare the certificate is to be revoked.
- (5) When the Minister receives the decision of the Royal Court on an appeal against a certificate, the Minister must, in accordance with that decision –
 - (a) confirm the certificate;
 - (b) issue a fresh certificate; or
 - (c) revoke the certificate.
- (6) On an appeal against a waiver decision the Royal Court may –
 - (a) confirm the decision; or
 - (b) waive the requirement in question.
- (7) In this Regulation a reference to the Royal Court is a reference to that court as constituted, in accordance with rules of court, for the purposes of this Regulation.

14 Appeal against decision under Regulation 13

- (1) An appeal may be made to Royal Court against a decision under Regulation 13, on the ground that the decision was erroneous in point of law.
- (2) An appeal under this Regulation may be made by the Minister or by the authorized insurer no later than 28 days following receipt of the decision made under Regulation 13.
- (3) In this Regulation a reference to the Royal Court is a reference to that court as constituted, in accordance with rules of court, for the purposes of this Regulation.

15 Information to be provided in relation to an injured person

- (1) If compensation is sought in consequence of any injury suffered by an injured person, the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced, must, in accordance with paragraph (2), provide the information specified in paragraph (5)(a) and (b) and, where known, the information set out in paragraph (5)(c) to (h).
- (2) The information must be sent to the Minister, not later than 14 days after the date on which the claim in respect of the death or injury is made by or on behalf of the injured person.
- (3) If compensation is sought in consequence of any injury suffered by an injured person the following persons must comply with paragraph (4) –
 - (a) the injured person or, if that person has died, his or her personal representative;
 - (b) any person, other than a person required to give notice under paragraph (1), who is, or is alleged to be, liable to any extent in respect of the injury;
 - (c) if the claim is not made by the injured person, the person by whom it is made; and
 - (d) any person acting on behalf of a person within any of sub-paragraphs (a) to (c).
- (4) The person must send to the Minister, such information set out in paragraph (5), where known, as the Minister may request not later than 14 days after the date of the request.
- (5) The information is –
 - (a) the full name and address of the injured person;
 - (b) the full name and address of –
 - (i) the person against whom the claim is made,
 - (ii) anyone acting on behalf of that person;
 - (c) the date of birth or social security registration number of the injured person;
 - (d) the date on which the injury occurred;
 - (e) the nature of the injury;

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- (f) in respect of HSS treatment received at a hospital in respect of the injury –
 - (i) the name and address of the hospital, and
 - (ii) whether the injured person was admitted to hospital and, if so, the date of admission and discharge,
 - (iii) in respect of ambulance services provided to the injured person as a result of his or her injury –
 - (A) the date on which the services were provided,
 - (B) the name and address of any hospital to which the injured person was taken.
 - (6) Where the Minister has appointed a person under Regulation 2 to discharge all or any of the Minister's functions under these Regulations, the Minister shall provide the person appointed with such information regarding the provision of ambulance services and HSS treatment to an injured person as a result of his or her injury as the person appointed requires to discharge those functions.

16 Structured settlements

- (1) This Regulation applies where, apart from the provisions of this Regulation, the payments due under an agreement or court order referred to in paragraph (2) would fall to be treated for the purposes of these Regulations as compensation payments.
- (2) The agreement or court order referred to in paragraph (1) is –
 - (a) an agreement entered into in final settlement of a claim made by or on behalf of an injured person for –
 - (i) the making of periodical compensation payments (whether of an income or capital nature), or
 - (ii) the making of such payments and lump sum payments; or
 - (b) an order by a court which –
 - (i) awards damages to an injured person in respect of injury or death arising out of an incident; and
 - (ii) orders that the damages are wholly or partly to take the form of periodical payments.
- (3) Where this Regulation applies –
 - (a) the person liable to make the payment under the agreement or order shall be taken to have made a single compensation payment on the day of agreement or the date of making of the court order;
 - (b) payments made under the agreement or court order referred to in paragraph (2), and any other payment made to the injured person after the day of agreement or court order in respect of the same incident, shall be taken not to be compensation payments.
- (4) In this Regulation, “the day of agreement” means –
 - (a) if the agreement referred to in paragraph (2)(a) is approved by the court, the day on which that approval is given; and

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- (b) in any other case, the day on which the agreement is entered into.

17 Interim payments repaid under court order

- (1) This Regulation applies where –
- (a) an authorized insurer has made a payment of expenses to the Minister;
 - (b) that payment relates to a compensation payment which was an interim payment of damages in respect of the injury, the whole amount of which a court has ordered to be repaid; and
 - (c) no other compensation payment has been made by that person to the injured person in respect of the same injury.
- (2) Where this Regulation applies, the Minister shall repay to the person who made the compensation payment the amount of the payment referred to in paragraph (1)(a).

18 Circumstances in which payment into court to be treated as compensation payment

- (1) A payment into court made in respect of an injured person shall only be treated as the making of a compensation payment if it is –
- (a) accepted by or on behalf of the injured person within the initial period;
 - (b) accepted, after the initial period, in satisfaction of the injured person's claim by consent between the parties; or
 - (c) made, after the initial period, in accordance with a court order and in satisfaction of the claim.
- (2) In paragraph (1), “the initial period” means the period of 21 days after the receipt by the injured person of notice of the payment into court having been made.
- (3) In the circumstances referred to in paragraph (1)(a), the compensation payment shall be treated as having been made on the date on which the payment into court was made.
- (4) In the circumstances referred to in paragraph (1)(b), the compensation payment shall be treated as having been made on the date on which the application to the court for payment out is made.
- (5) In the circumstances referred to in paragraph (1)(c), the compensation payment shall be treated as having been made on the date of the court order.

19 Refund of overpayment by authorized insurer

- (1) This Regulation applies where –
- (a) either –
 - (i) the Minister has made a re-determination of the expenses in accordance with paragraph 8(4) of the Schedule, or

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- (ii) as a result of a review under Regulation 11 or on an appeal under Regulation 12 or 14 a fresh certificate has been issued or a certificate has been revoked; and
 - (b) in consequence of the re-determination, review or appeal, it appears that the amount of any expenses paid by an authorized insurer is more than the amount that the person ought to have paid.
 - (2) Where this Regulation applies, the Minister shall pay to authorized insurer who paid the expenses the difference between the amount that has been paid and the amount that ought to have been paid.

20 Underpayment by authorized insurer

- (1) This Regulation applies where –
 - (a) either –
 - (i) the Minister has made a re-determination of the expenses in accordance with paragraph 8(4) of the Schedule, or
 - (ii) as a result of a review under Regulation 11 or on an appeal under Regulation 12 or 14 a fresh certificate has been issued or a certificate has been revoked; and
 - (b) in consequence of the re-determination, review or appeal it appears that the amount of any expenses paid by an authorized insurer is less than the amount that the person ought to have paid.
- (2) Where this Regulation applies the authorized insurer shall pay to the Minister the difference between the amount that has been paid and the amount that ought to have been paid.

21 Requirement for Minister to provide statement of expenses

Where the Minister repays an overpayment under Regulation 19 or requires a payment under Regulation 20 the Minister shall send a statement to the authorized insurer who paid the expenses showing –

- (a) the name and address of the injured person to whom the statement relates;
- (b) the total amount already paid to the Minister;
- (c) the amount that ought to have been paid to the Minister; and
- (d) the amount of the difference between the amount already paid and the amount that ought to have been paid, and whether a repayment by the Minister to the authorized insurer, or a further payment by the authorized insurer to the Minister is required.

22 Payments received by Minister

A payment received by the Minister from an authorized insurer under these Regulations is income of the Minister's department of the States.

23 Citation, application and commencement

- (1) These Regulations may be cited as the Motor Traffic (Third-Party Insurance) (Cost Recovery) (Jersey) Regulations 201- and shall come into force 7 days after they are made by the States.
- (2) These Regulations do not apply to a claim arising out of an accident that occurs before the commencement of these Regulations.

SCHEDULE

(Regulation 7)

DETERMINATION OF EXPENSES**1 Amount of expenses**

- (1) Subject to the following provisions of this Part, a certificate shall specify –
 - (a) an amount, not exceeding the amount prescribed for the purposes of Article 3(2B)(c) of the Law, for each occasion on which, as a result of his or her injury, the injured person was provided with ambulance services for the purpose of taking him or her to a hospital for treatment;
 - (b) where the injured person received HSS treatment at a hospital in respect of his or her injury, either –
 - (i) if the person was not admitted to hospital, an amount not exceeding the amount prescribed for the purposes of Article 3(2B)(b) of the Law, or
 - (ii) if the person was admitted to hospital, an amount, not exceeding the amount prescribed for the purposes of Article 3(2B)(a) of the Law, for each day or part day of admission.
- (2) For the purposes of sub-paragraph (1)(a) the reference to taking a person to hospital includes taking the person from one hospital to another.
- (3) Where the injured person was admitted to hospital on one day and discharged on another day, the day of discharge shall be disregarded for the purposes of sub-paragraph (1)(b)(ii).
- (4) The amount which a certificate may specify under sub-paragraph (1)(a) or (1)(b) or both must not exceed the amount prescribed for the purposes of Article 3(2B)(d) of the Law.

2 Treatment to be disregarded

If or to the extent that a certificate relates to the treatment of an injured person –

- (a) in a hospital that is carried on for profit; or
- (b) in a hospital, in a case where the Minister is not liable for the cost of the treatment,

the certificate must indicate that no amount is payable to the Minister by reference to the certificate.

3 Allowance for earlier payment

- (1) This sub-paragraph applies where an authorized insurer –
- (a) makes a compensation payment in the form of a lump sum (an “earlier payment”); and
 - (b) subsequently makes another compensation payment in respect of the same injury (a “later payment”).
- (2) Where sub-paragraph (1) applies, the amount for the purposes of Article 3(2) of the Law to be specified in the certificate in respect of the later payment shall be the amount determined in accordance with these Regulations, subject to the prescribed maximum amounts, reduced by the amount paid in satisfaction of any liable to pay expenses in connection with the earlier payment.

4 Overseas visitors’ charges

Where –

- (a) an injured person who is an overseas visitor has been charged for the provision of HSS treatment and ambulance services; and
- (b) the compensation payment made to or in respect of that person includes an amount in respect of the charges referred to in sub-paragraph (a),

the amount of the expenses to be specified in the certificate which relates to the compensation payment referred to in sub-paragraph (a) shall be £0.

5 Treatment to be taken into account

- (1) A certificate shall only take into account treatment received, or ambulance services provided, before the date the certificate is issued.
- (2) A certificate issued on an application by an authorized insurer made after a compensation payment has been made shall only take into account treatment received, or ambulance services provided, before the settlement date.

6 Court order for reduction in damages

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

- (a) in respect of which a court has ordered a reduction in damages under Article 4 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960;
- (b) in respect of which a court 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 the damages are to be so reduced; or

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- (c) in respect of which a document has been made under any provision of the law of a place outside Jersey –
- (i) which appears to the Minister to correspond to an agreed judgment or order entered or sealed by an officer of a court in Jersey, and
 - (ii) which specifies the matters mentioned in clauses (i) and (ii) of sub-paragraph (b),

the amount (or amounts) specified in the certificate is (or are) to be that (or those) which would be so specified apart from this paragraph, reduced by the same proportion as the reduction in damages.

7 Settlement agreeing reduction in damages

- (1) If –
- (a) the authorized insurer applying for a certificate sends to the Minister a report which contains the information specified in sub-paragraph (2) and is signed by the parties to the agreement referred to in sub-paragraph (2)(a); and
 - (b) it appears to the Minister, from that report, that the agreement was reached in a fair manner,

the amount (or amounts) specified in the certificate shall be reduced by the same proportion as the reduction of damages in the claim.

- (2) For the purposes of sub-paragraph (1)(a) the following information is specified –
- (a) a statement that it was agreed by or on behalf of the injured person and the person who proposed to make a compensation payment that the damages payable under the settlement were to be reduced to reflect the injured person's share in the responsibility for the injury in question;
 - (b) a statement as to how that agreement was reached;
 - (c) the amount of damages payable under the settlement had there been no such agreement; and
 - (d) the amount or proportion by which it was agreed that the damages were to be reduced; and
 - (e) the names of all those involved in the settlement process.

8 Apportionment of liability to pay expenses

- (1) This paragraph applies where each of 2 or more persons (the "compensators"), at least one of whom is an authorized insurer –
- (a) has made a compensation payment to or in respect of an injured person in respect of the injury; or
 - (b) is, or is alleged to be, liable to any extent in respect of the injury.
- (2) This sub-paragraph applies where –
- (a) an authorized insurer applies for a certificate under Regulation 6 or 7 and, at the time of making the application, requests that the

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- liability to pay the expenses in respect of the injury to be apportioned between the compensators; and
- (b) before the Minister issues the certificate, the Minister receives sufficient evidence to enable the Minister to determine how that liability is to be apportioned.
- (3) This sub-paragraph applies where –
- (a) an authorized insurer to whom a certificate has been issued requests that the liability to pay the expenses be apportioned between the compensators; and
 - (b) the Minister receives sufficient evidence to enable the Minister to determine how that liability is to be apportioned.
- (4) Where sub-paragraph (2) or (3) applies –
- (a) the Minister shall determine or, in the case of an authorized insurer) to whom a certificate has been issued, re-determine, the liability of each compensator to pay the expenses;
 - (b) for the purposes of clause (a), the Minister shall apportion between the compensators the amount of the expenses that would be payable if there was only one compensator;
 - (c) in the case of an authorized insurer to whom a certificate has not been issued, the certificate when issued to that person shall specify the liability to pay the relevant expenses and the share of that liability that has been apportioned to that person; and
 - (d) in the case of an authorized insurer to whom a certificate has been issued, when the Minister re-determines that person's liability to pay the expenses, Regulation 11(5) shall apply as if the re-determination were a review under that Regulation.
- (5) In this paragraph, “compensation payment” includes a payment made by a person who is not an authorized insurer, in respect of the death of or bodily injury to any person arising out of the use of a motor vehicle on a road.

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- ¹ *chapter 25.250*
 - ² *chapter 25.250*
 - ³ *chapter 04.560*
 - ⁴ *chapter 07.035*