

EXPLANATORY MEMORANDUM TO
THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS)
REGULATIONS 2015

2015 No. 295

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 One purpose of the instrument is to increase the charges recoverable from persons who pay compensation to a person for an injury in cases where that injured person receives National Health Service hospital treatment or ambulance services. The increase in charges reflects the uplift to Hospital and Community Health Services (HCHS) annual inflation.

- 2.2 This instrument also consolidates the Personal Injuries (NHS Charges) (Amounts) Regulations 2007 and the following amending instruments to simplify the legislative landscape:

- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2008;
- Certain provisions of the Personal Injuries (NHS Charges) Amendment Regulations 2009;
- The Personal Injuries (NHS Charges) Amendment (No. 2) Regulations 2009;
- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2010;
- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2011;
- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2012;
- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2013; and,
- The Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2014.

The intention of this consolidation exercise is not to remove any legal requirements but to make the law clearer.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument increases the charges recoverable by virtue of regulations made under Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”), and the Committee’s attention is drawn to the information in paragraph 7 as to how the increases have been calculated.

4. Legislative Context

4.1 Hospitals have been able to recover the cost of treating victims of road traffic accidents for more than 70 years. The arrangements for this were streamlined and modernised through the provisions of the Road Traffic (NHS Charges) Act 1999.

4.2 The Law Commission for England and Wales consulted in 1996 on whether the process of recovery of NHS costs should take place in all cases where people claim and receive personal injury compensation for injuries that require NHS hospital treatment. The majority of respondents were in favour.

4.3 Part 3 of the 2003 Act therefore made provision for the establishment of such a scheme, known as the NHS Injury Costs Recovery (ICR) Scheme. The Regulations governing the operation of the expanded scheme came into force on 29 January 2007. There are three sets of Regulations:

- Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006;
- Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006;
- Personal Injuries (NHS Charges) (Amounts) Regulations 2007, which this instrument revokes and replaces.

4.4 The amounts recoverable under the ICR scheme were specified in regulation 2 of the Personal Injuries (NHS Charges) (Amounts) Regulations 2007 and are now specified in regulation 2 of, and Schedule 1 to, this instrument. This instrument also increases the amounts recoverable in respect of injuries occurring on or after 1st April 2015.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Welsh Ministers have been consulted as required by section 195(3) of the 2003 Act and are content.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why?**

- 7.1 The Personal Injuries (NHS Charges) (Amounts) Regulations 2007 and the Regulations amending them were identified as part of the Government's Red Tape Challenge as being complex due to the number of amendments and requiring consolidation to ensure that the law is clear and easy to understand.
- 7.2 The Red Tape Challenge gave businesses and the general public the opportunity to challenge the Government to get rid of or improve burdensome regulations, to boost business and economic growth and to save taxpayers' money. The Red Tape Challenge put a 'spotlight' on different areas of regulation in turn, collecting comments from the public and putting proposals together for regulatory reform.
- 7.3 This instrument makes provision, amongst other things, for the calculation of NHS charges under the ICR scheme. Regulation 2 of, and Schedule 1 to, this instrument provide for a simple set of tariffs which are updated annually. The table of tariffs in Schedule 1 lists the tariffs applicable to an injury, dependent on when the injury occurred.
- 7.4 The Department of Health undertook a full consultation in summer 2006 on all the draft Regulations governing operation of the ICR scheme. This included seeking agreement to continue the practice established under the old Road Traffic Act recovery scheme of automatically updating the level of charges on 1st April every year in line with HCHS inflation. The proposal was agreed by the majority of respondents. For this reason, the majority of this instrument comes into force on 1st April 2015, with the exception of the reference in regulation 4 to the National Health Service (Charges to Overseas Visitors) Regulations 2015 which comes into force on 6th April 2015. This is because those Regulations come into force on that date as part of a package of Home Office measures. The reference to those Regulations in this instrument cannot, therefore, come into force before 6th April.
- 7.5 HCHS inflation is based on expenditure specific to the hospital sector and is calculated by combining the indices for NHS pay and price inflation using an approximate weighting of 58.5/41.5. The latest estimate for HCHS inflation is 1.6% for 2014/15.
- 7.6 Consequently, the charges (rounded to the nearest whole pound) for treatment or services in respect of injuries occurring on or after 1st

April 2015 will increase as follows:

Hospital treatment without admission (out-patient) from £637 to £647;

Treatment with admission to hospital (in-patient) from £783 to £796;

Ambulance journey from £192 to £195

Maximum amount that can be recovered in relation to any one injury (the cap on charges) £46,831 to £47,569.

7.7 We estimate that the increase in the tariffs will provide additional income to NHS hospitals of £3.2m per year (based on the difference between the current charge and the proposed charge applied to the latest (2014) activity data). As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

(Note: the £3.2m figure includes ambulance journeys)

• **Secretary of State's Overarching Duties**

7.8 The Secretary of State duties in the National Health Service Act 2006 have been considered. The Secretary of State's duties are to:

- Promote a comprehensive health service (section 1);
- Improve the quality of health services (section 1A);
- The NHS constitution (section 1B);
- Reducing inequalities (section 1C);
- Promoting autonomy (section 1D);
- Research (section 1E);
- Education and training (section 1F); and,
- Reporting on and reviewing treatment of providers (section 1G).

7.9 This SI uplifts the tariff of charges that support the NHS Injury Cost Recovery scheme. We conclude that there is an impact on the duty to promote a comprehensive health service as it enables the appropriate charges to be recovered in line with inflation which maintains the real-terms value of the funds recovered. This enables the Secretary of State to progress the health service otherwise too little is being recouped. We do not consider that the SI impacts on the Secretary of State's other duties.

8. Consultation outcome

8.1 It was not necessary to consult on the instrument. This instrument consolidates, but does not materially amend, the previous Regulations and uprates charges. There was a positive response to the Law Commission's consultation in 1996 which included the proposal to uprate the level of charges in line with HCHS inflation each year. The support for this practice to continue was also confirmed in the outcome of the Department of Health's public consultation in 2006 on the draft Regulations governing the ICR scheme.

9. Guidance

- 9.1 It is not considered necessary to issue guidance on the amendments proposed by the Regulations. The uplift in the tariff is a routine event that does not require any additional explanation.
- 9.2 We propose to write separately to the Association of British Insurers and the Motor Insurance Bureau who are already aware of the likely scale of increases.

10. Impact

- 10.1 A full Impact Assessment (IA) has not been prepared for this instrument, as the impact on business, charities or voluntary bodies is negligible. There is no expansion or reduction in the level of regulatory activity as a consequence of this instrument. The scheme is already in place, there is no change in policy and the uplift to the tariff (being based on HCHS inflation) was agreed with the insurance industry as part of the consultation process in 2006.
- 10.2 The bulk of the NHS charges are covered by insurance, and will be paid by insurers in addition to the personal compensation payment which the injured person will have secured. It is possible that insurers will choose to pass the increased costs on to their customers through increased insurance premiums.
- 10.3 Any impact on premiums due to this uplift is likely to be negligible. The £3.2m additional income for the NHS can be broken down as £2.11m for road traffic accidents and £1.06m for non-road traffic accident.
- 10.4 If we assume the £2.11m for road traffic accidents are spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.03% or around 20p per policy. These figures are calculated using 2013/14 estimates for net motor premiums of £10.96bn and estimated average annual expenditure per household buying motor insurance of £680 based on information provided by the Association of British Insurers.
- 10.5 The remaining £1.06m is likely to be a cost pressure on public liability and employer insurance. If this cost was transferred to the population, for e.g. by lower wages - to cover the increase in employer insurance contributions, and increased tax – to cover the public liability insurance, it would cost around 3p per person.
- 10.6 In 2013/14, the Compensation Recovery Unit (CRU, part of the DWP) received a total of £2.85m to administer the scheme on behalf of the Secretary of State for Health (for England and Wales) and the Scottish Ministers (for Scotland). During the same period, the CRU recovered

around £223m for NHS hospitals. Costs are therefore 1.27% of recoveries. This tariff increase does not increase the cost of administering the scheme as a facility to increase the level of charges has already been built into the IT system. There are therefore no additional costs to the Exchequer arising from the tariff increase.

11 Regulating Small Business

11.1 This instrument applies to small business but has a minimal impact on business including small firms employing up to 20 people as explained in paragraph 10.1 to 10.6 above.

12. Monitoring & Review

12.1 The change in the tariff is an agreed annual event that seeks to maintain the levels of funds recovered in real terms. The tariff is reviewed and adjusted annually using the latest available data.

13. Contact

Karl Payne at the Department of Health Tel: 0113 2545380 or e-mail: karl.payne@dh.gsi.gov.uk can answer any queries regarding the instrument.