

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT (COMMUNITY HEALTH AND
STANDARDS) ACT 2003 CONSEQUENTIAL PROVISIONS (RECOVERY OF NHS
CHARGES) ORDER 2007

2007 NO. 917

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of her Majesty.
2. **Description**
 - 2.1 This instrument makes provision concerning the appeal tribunal related to persons who have appealed under section 157(1) of Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) against a certificate issued to them to pay NHS charges. The Secretary of State is required to refer such an appeal to an appeal tribunal constituted under the Social Security Act 1998. This instrument amends regulation 36 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the social security regulations”) to require the appeal tribunal to have a medically qualified panel member on the panel to hear an appeal against a certificate.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 provides for a scheme for the recovery of charges in cases where an injured person who receives a compensation payment in respect of his injury has received National Health Service hospital treatment or ambulance services. The charges are specified in certificates issued by the Secretary of State, and are payable by persons who pay compensation to the injured person
 - 4.2 A person to whom a certificate is issued may appeal against the certificate under section 157(1) of the 2003 Act (“section 157(1)”). The Secretary of State is required to refer such an appeal to an appeal tribunal constituted under the Social Security Act 1998. This Order amends the social security regulations, to require the appeal tribunal to have a medically qualified panel member on the panel to hear an appeal under section 157(1).
 - 4.3 The Secretary of State makes this order in exercise of the powers conferred by section 201 of the 2003 Act. She has consulted the National Assembly for Wales in accordance with section 201(2) of that Act and she has consulted the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992.

5. Extent

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 For more than 70 years, hospitals have been able to recover the costs of treating the victims of road traffic accidents where the injured person has made a successful claim for personal injury compensation. The arrangements for this were streamlined and modernised through the provisions of the Road Traffic (NHS Charges) Act 1999. Following several consultations, Regulations were made in December 2006 to implement the NHS Injury Costs Recovery Scheme (“ICR Scheme”) for the recovery of NHS costs where a payment has been made for personal injury compensation. The ICR Scheme came into force on 29th January 2007.

7.2 Under the previous road traffic recovery scheme a person could appeal against a certificate issued to them to pay NHS charges. The appeal tribunal to hear such appeals is constituted under the Social Security Act 1998. A similar appeals process operates under the new Injury Cost Recovery Scheme. This order requires the appeal tribunal to have a medically qualified panel member on the panel to hear an appeal.

7.3 Appeals can be made on a number of grounds. However, in most cases, it is likely that medical issues will arise. For example, the compensator may appeal on the grounds that the treatment provided was not directly the result of the injury, but related to some underlying condition already in place at the time of the injury. Equally, it may be argued that the treatment provided was not NHS treatment. These are clearly complex and detailed medical issues which will require a medically qualified panel member to allow the panel to address them effectively.

8. Impact

8.1 There is not expected to be any impact on the business sector or the public sector. A Regulatory Impact Assessment has therefore not been attached to this memorandum.

9. Contact

9.1 Mr Martin Campbell at the Department of Health Tel: 0113 254 5174 or e-mail: martin.campbell@dh.gsi.gov.uk can answer any queries regarding this instrument.