

## EXPLANATORY MEMORANDUM TO

### THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 969

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to increase the charges recoverable by the NHS for an injury which occurs on or after 2<sup>nd</sup> October 2023 under the NHS Injury Cost Recovery Scheme (“ICR Scheme”). Under the ICR Scheme charges are recoverable from persons who pay compensation to a person for an injury where that injured person receives NHS hospital treatment or ambulance services.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument increases the charges recoverable in relation to injuries which occur on or after 2<sup>nd</sup> October 2023 by virtue of regulations made under Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”). The Committee’s attention is drawn to the information in paragraph 7 as to how the increases have been calculated.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales. Welsh Ministers have been consulted as required by section 195(3) of the 2003 Act and are content.
- 4.2 The territorial application of this instrument is England and Wales.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 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.
- 6.2 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.

- 6.3 Part 3 of the 2003 Act made provision for the establishment of a scheme, known as the NHS Injury Cost Recovery (“ICR”) Scheme. The Regulations governing the operation of the expanded scheme came into force on 29 January 2007.
- 6.4 There are three sets of Regulations:
- The Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006 (S.I. 2006/3388);
  - The Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006 (S.I. 2006/3398); and
  - The Personal Injuries (NHS Charges) (Amounts) Regulations 2015 (S.I. 2015/295) (“the Principal Regulations”).
- 6.5 The Principal Regulations consolidated, but did not materially amend, previous regulations. The Principal Regulations also revised charges in line with inflation.
- 6.6 The amounts recoverable under the ICR Scheme from 1<sup>st</sup> April each year are specified in the table in Schedule 1 to the Principal Regulations (pursuant to regulation 2 of the Principal Regulations). However, this instrument increases the amounts recoverable in respect of injuries occurring on or after 2<sup>nd</sup> October 2023 as it introduces a mid-year tariff uplift. This instrument also revokes the Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2023 (S.I. 2023/220).

## 7. Policy background

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

- 7.1 DHSC undertook a full consultation in summer 2006 on all the draft regulations governing the operation of the ICR scheme. This included seeking agreement to continue the practice established under the former Road Traffic Act recovery scheme of automatically uprating the level of charges on 1<sup>st</sup> April every year in line with Hospital and Community Health Services (“HCHS”) inflation. The proposal was agreed by the majority of respondents.
- 7.2 The table in Schedule 1 of the Principal Regulations therefore provides yearly tariffs which apply to injuries which occurred on or after that year’s date.
- 7.3 The estimate of HCHS inflation in the tariffs is calculated by NHS England in their annual uplift to the NHS Payment Scheme, formerly the NHS national tariff – the set of prices and rules used by providers of NHS care and commissioners to deliver the most efficient, cost-effective care to patients.<sup>1</sup>
- 7.4 We used notional pay inflation figures for the 1<sup>st</sup> April 2023 tariff uplift. However, following the unusually high rate of inflation this year and specifically the higher agreed NHS pay settlement for wages for Hospital and Community Health Service staff, we are introducing a mid-year tariff uplift to address the significant gap between forecast and actual pay inflation.
- 7.5 Consequently, the charges (rounded to the nearest whole pound) for treatment or services in respect of injuries occurring on or after 2<sup>nd</sup> October 2023 will increase as follows:
- Ambulance journey from £238 to £243.

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<sup>1</sup> <https://www.england.nhs.uk/publication/2023-25-nhsps-consultation/>

- Hospital treatment without admission (out-patient) from £788 to £806.
- Treatment with admission to hospital (in-patient) from £968 to £991.
- The maximum amount that can be recovered in relation to any one injury (the cap on charges) increases from £57,892 to £59,248.

7.6 We estimate that the mid-year tariff uplift will generate an additional £2m for the NHS. As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

9.1 This instrument does not consolidate legislation.

## **10. Consultation**

10.1 There was no statutory duty to consult on this instrument. Nonetheless due to the unprecedented nature of a mid-year tariff uplift, DHSC carried out a targeted consultation as good practice. There were no negative responses to the policy, two respondents welcomed the mid-year tariff uplift and one respondent commented that they did not wish to see a mid-year review become the norm. The responses to the consultation were taken into account alongside the 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 DHSC's public consultation in 2006 on the draft regulations governing the ICR scheme (also see paragraph 7.2 in respect of consultation on the Principal Regulations).

10.2 As required by section 195(3) of the 2003 Act, consultation with the Welsh Ministers was undertaken (see paragraph 4.1).

## **11. Guidance**

11.1 It is not considered necessary to issue guidance on the amendments set out in the instrument. We are introducing a mid-year tariff uplift to address the significant gap between forecast and actual pay to maintain the level of funds recovered in real terms.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is very minor.

12.2 The impact on the public sector is very minor.

12.3 An Impact Assessment has not been prepared for this instrument because this does not constitute a regulatory provision under section 22 of the Small Business, Enterprise and Employment Act 2015, as it only seeks to amend a charge under the scheme.

12.4 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.

**13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses but has a minimal impact on business, including small firms employing up to 50 people, as explained in paragraphs 12.1 to 12.4 above.

**14. Monitoring & review**

- 14.1 The approach to the monitoring of this legislation is to review and periodically adjust using the latest available data.

**15. Contact**

- 15.1 Junaid Tamimu, Policy Manager at the Department of Health and Social Care; [Junaid.Tamimu@dhsc.gov.uk](mailto:Junaid.Tamimu@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Catherine Davies, Deputy Director for the EU Strategy and Cost Recovery Division, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Lord Nick Markham CBE, Parliamentary Under Secretary of State (Minister for the Lords) at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.