

**EXPLANATORY MEMORANDUM TO
THE RECOVERY OF HEALTH SERVICES CHARGES (AMOUNTS)
REGULATIONS (NORTHERN IRELAND)**

2006 NO. 507

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

2. Description

2.1 This Statutory Rule (SR) makes provision concerning the amounts of health services charges to be recovered from persons who pay compensation in cases where an injured person receives health service hospital treatment or ambulance services. As well as setting the tariffs for outpatient and inpatient treatment, the provision of ambulance services and the maximum amount to be recovered in relation to any one injury, this SR also sets out how the scheme for the recovery of charges (provided for in the Recovery of Health Services Charges (Northern Ireland) Order 2006 (“the 2006 Order”)) is to deal with a range of circumstances in which the amounts to be recovered may need to be adjusted.

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

3.1 None.

4. Legislative Background

4.1 The 2006 Order provides the legislative framework for the Recovery of Health Services Charges Scheme (“the Scheme”) that will come into operation on 29 January 2007.

4.2 This SR regulates the procedures for the calculation and collection of health services charges under the scheme. It is part of a group of three linked SRs (see paragraph 7.7 below). The other two SRs are subject to the negative resolution procedure and will be laid before the Northern Ireland Assembly (“the Assembly”) at a later date, with a separate Explanatory Memorandum covering both. This SR, however, is made using, for the first time, powers under Article 5(2) of the 2006 Order. Article 19(1) of the 2006 Order requires the first regulations made under Article 5(2) to be approved by resolution of the Assembly. However, during suspension of the Assembly these have to be laid at Westminster, subject to the negative resolution procedure.

5. Territorial Extent and Application

5.1 This SR applies to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 For more than 70 years, throughout the United Kingdom, 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. In Northern Ireland, the arrangements for this were streamlined and modernised through the provisions of Part II of the Health and Personal Social Services Act (Northern Ireland) 2001. The provisions are similar to those in Great Britain contained in the Road Traffic (NHS Charges) Act 1999.
- 7.2 The Law Commission for England and Wales consulted in 1996 on whether this recovery should take place not just following road traffic accidents but in all cases where people claim and receive personal injury compensation. More than three quarters of the people who responded to the consultation agreed with the Commission's view that the NHS should be able to recover its costs from the liable party. The NHS, and therefore the taxpayer, should not have to pay for the treatment of such patients. Rather, those causing injury to others should pay the full cost of their actions, including costs of NHS treatment.
- 7.3 In the autumn of 2003 the Department of Health, Social Services and Public Safety ("the DHSSPS") undertook a full public consultation exercise on whether the Law Commission's findings had application in Northern Ireland and on how such an expanded scheme might operate. The overall level of response to the consultation was low. The responses received showed a large majority (about 75% of responders) in favour of expanding the scheme and proposals for its administration.
- 7.4 A similar consultation in Great Britain (in 2002) had revealed concerns about whether the Employers' Liability Compulsory Insurance (ELCI) market was sufficiently robust to cope with the expansion. Virtually all employers are required by law to hold ELCI, and at the time of the consultation there were considerable concerns following a period of sudden and significant increases in premiums, leading employers and insurers to fear an imminent collapse of the ELCI market. Following on from that consultation the necessary legislative framework to allow expansion of the existing scheme was put in place as Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act"). However, in response to the concerns expressed during consultation and to take account of a Government study of the ELCI market, implementation of the legislation was postponed.
- 7.5 A further consultation in Great Britain, in late 2004, on the regulations necessary to implement the Scheme raised more concerns about the planned timing of its introduction, as the ELCI market was still considered fragile, and brought about a further postponement. It also revealed a need for the 2003 Act to be amended, to widen the range of cases where contributory negligence can be taken into account. The Health Act 2006 contains the necessary amendment. The legislation is to come into operation from 29 January 2007.
- 7.6 In 2004, following the consultation (see paragraph 7.3 above), the DHSSPS prepared a draft Order to replicate for Northern Ireland the provisions of Part 3 of the 2003 Act and consulted on the draft. The level of response was very low and none of the comments received had tangible effect on its content. However, the decision in Great Britain to amend the 2003 Act was considered equally appropriate for Northern

Ireland and the making of what became the 2006 Order was delayed so its content could reflect the amendment to the 2003 Act made by the Health Act 2006. As in Great Britain, the Scheme is to come into operation on 29 January 2007.

7.7 Three sets of regulations, in essence mirroring their Great Britain equivalents, are required for implementation of the Scheme. They are the:

- Recovery of Health Services Charges (Amounts) Regulations (Northern Ireland);
- Recovery of Health Services Charges (General) Regulations (Northern Ireland);
- Recovery of Health Services Charges (Reviews and Appeals) Regulations (Northern Ireland).

The equivalent set of regulations in England and Wales to the first of the above is the Personal Injuries (NHS Charges) (Amounts) Regulations.

7.8 Under the existing road traffic recovery scheme the amounts to be recovered are set using a simple tariff system. The tariff consists of a single one-off payment where hospital treatment is provided without admission (currently £505) or a daily rate (currently £620) for each day or part day of admission to hospital, excluding the day of discharge. There is also a statutory ceiling on how much can be recovered in relation to treatment of injuries resulting from any one incident (currently £37,100, or roughly 60 days inpatient treatment). The intention is that these amounts will be migrated to the Scheme, with the addition of a new element to cover the cost of any ambulance journeys that may be required. This has been set at £159.

7.9 All these amounts have been established by calculating the average cost of treatment for the injuries typically suffered in accidents and, for ambulance journeys, the average costs of providing ambulance services. The inpatient charge includes an element to cover subsequent outpatient treatment. Consequently these regulations permit the inclusion on certificates of charges of the inpatient charge or the outpatient charge, but not both, because to do otherwise would mean that compensators could be charged twice for the outpatient element of treatment.

7.10 Under the road traffic recovery scheme the amounts are uprated annually in April in line with Hospital and Community Health Services inflation. Continuing with this process was an issue considered in the consultation on the draft regulations and those who commented were in favour of doing so. The intention, therefore, is to retain the annual uprating exercise. However, because the Scheme is being introduced so close to April, it has been decided that it will cause unnecessary confusion and an increased administrative burden to uprate the tariffs in 2007. Therefore, the first uprating under the Scheme will take place in April 2008.

7.11 Alternatives to this simple tariff system have been considered, for example it has been suggested that the amounts recovered should be based on the actual costs of treatment. However, a key concern has been to keep the system simple and straight forward for all those concerned: the health services, compensators and the Compensation Recovery Unit who carry out the recovery. Having a multitude of tariffs would make the Scheme far more complicated to operate for everyone involved and would make the whole enterprise unwieldy and burdensome. It has therefore been decided that retaining the simple average cost tariff system is the better option.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The impact on the public sector will be a small rise in insurance premiums, suggested in the RIA (see paragraph 39) to be just over 4%.

9. Contact

- 9.1 Mr Stephen Popplestone at the Department of Health, Social Services and Public Safety, Tel: 028 90765694 or e-mail: stephen.popplestone@dhsspsni.gov.uk can answer any queries regarding this SR.