

## **EXECUTIVE NOTE**

### **THE HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003 (COMMENCEMENT NO.1 AND SAVINGS) (SCOTLAND) ORDER 2007 SSI/2007/ 10 (C. 2 )**

1. The above instrument was made in exercise of the powers conferred by sections 195(1) and 199(1) of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act"). In accordance with section 199(2)(c)(ii) of the 2003 Act, this Order has been made with the consent of the Secretary of State for Health. The instrument is subject to the negative resolution procedure due to the inclusion of the savings provisions in Article 3.

#### **Policy Objectives**

2. Part 3 of the 2003 Act provides for a Scheme for the recovery of charges incurred by the National Health Service in cases where a person who suffers a personal injury receives National Health Service treatment or ambulance services. The charges are specified in certificates issued by the Scottish Ministers, and are payable by persons who are required to pay compensation to the injured person. This Order is required to commence the sections of the 2003 Act relevant to the NHS Cost Recovery Scheme.

3. 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 (the 1999 Act).

4. Commencement of the legislation in the 2003 Act will repeal the 1999 Act but this Order contains transitional provisions in relation to the 1999 Act which will continue to apply in respect of injuries which occur before 29th January 2007, the date on which the new expanded scheme commences.

#### **Consultation**

5. The Law Commission for England and Wales consulted in 1996 on whether the recovery of NHS costs 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 and that 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 the costs of NHS treatment.

6. The Scottish Executive Health Department and the Department of Health undertook parallel consultation exercises on how such a Scheme might operate in the Autumn of 2002. The responses in the main supported the Scheme and proposals for its administration. There were some concerns, however, about whether the

Employers' Liability Compulsory Insurance (ELCI) market was sufficiently robust to cope with the expansion.

7. Following on from that consultation the necessary legislative framework was put in place as Part 3 of the 2003 Act. However, in response to the concerns expressed, the Scottish Executive and the Westminster Government committed to not implementing the Scheme until a study of the ELCI market, carried out by the Department for Work and Pensions during 2003, was published. The study's final report, issued in December 2003, recommended that implementation of the Scheme should be postponed for a year, and this recommendation was accepted.

8. A further consultation was undertaken at the end of 2004 covering in detail the draft Regulations that would govern the Scheme. There are three sets of regulations:

- The Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006;
- The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006;
- The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006.

9. The Regulations have been made. The Amounts Regulations were subject to the affirmative resolution procedure and the General and the Reviews and Appeals Regulations were subject to negative resolution procedure.

10. The consultation raised further concerns about the planned timing for introducing the Scheme, as the ELCI market was still considered fragile. After further discussions with the Department for Work and Pensions, which was developing a programme of work to implement the recommendations of its earlier study, Ministers in both the Executive and Westminster agreed to one further postponement of implementation of the Scheme from April 2005 to January 2007.

11. The following bodies were included in both the 2002 and 2004 consultations:

NHS Boards (and NHS Trusts)

Scottish NHS Confederation

The Law Society of Scotland

The Scottish Law Agents Society

The Faculty of Actuaries

Motor Insurers Bureau

Scotland Patients Association

Scottish Association of Health Councils

The Faculty of Advocates

The Scottish Consumer Council

Association of British Insurers

Various Insurance Bodies

**Financial effects**

12. The instrument has no financial effects on the Scottish Executive or local government. Furthermore, it should be noted that the liability for charges rests with the compensator, and not with the person who has been compensated. A Regulatory Impact Assessment has been completed and this is attached.

13. A similar Order is being made by the Department of Health for the equivalent Scheme in England and Wales.

**Scottish Executive Health Department**  
**January 2007**