

EXECUTIVE NOTE

THE PERSONAL INJURIES (NHS CHARGES) (SCOTLAND) AMENDMENT REGULATIONS 2009 (S.S.I. 2009/193)

1. The above instrument was made in exercise of the powers conferred by sections 153(2) and (5), 160(1) to (3), 168 and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”). The instrument is subject to negative resolution procedure.
2. These Regulations amend the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 (“the principal Regulations”) and the Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006 (“the 2006 Regulations”).

Background

3. The purpose of the instrument is to:
 - (a) increase the charges (“NHS charges”) recovered from persons who pay compensation (“compensators”) in cases where an injured person receives National Health Service hospital treatment or ambulance services. The increase in charges relates to an uplift for Hospital and Community Health Service (HCHS) annual inflation, and
 - (b) ensure that two sets of NHS charges cannot be levied for the same hospital treatment for overseas visitors.

Increase in NHS charges

4. The new NHS charges will apply in cases where compensation has been made in respect of incidents occurring on or after 12th June 2009. The NHS charges will be increased as follows:

	Current	From 12 th June 2009
Where the injured person was provided with NHS ambulance services for the purpose of taking him/her to a hospital for NHS treatment (for each journey)	£165	£171
Where the injured person received NHS treatment at a hospital in respect of his/her injury but was not admitted to hospital (flat rate)	£547	£566
Where the injured person received NHS treatment at a hospital in respect of his/her injury and was admitted to hospital (daily rate)	£672	£695
The cap (being the maximum amount that will be claimed from a compensator) in any one case resulting in admission to hospital	£40,179	£41,545

5. The NHS charges are revised annually to take account of Hospital and Community Health Services (HCHS) pay and price inflation. The latest estimate for HCHS inflation is 3.4%.

6. The Scheme is administered on behalf of Scottish Ministers by the Compensation Recovery Unit (CRU) of the Department of Work and Pensions (DWP) in accordance with an agency arrangement under section 93 of the Scotland Act 1998.

Removal of Dual Charging

7. The separate provisions of the principal Regulations and the NHS (Charges to Overseas Visitors)(Scotland) Regulations 1989 (“the 1989 Regulations”) mean that the cost of treatment provided to a person who is not ordinarily resident in the UK and who is involved in a personal injury claim could be levied twice, although this affects only a small number of cases each year. This was not the intention when the principal Regulations were introduced.

8. The intention is therefore to remedy this by amending the principal Regulations to make provision for NHS charges to be reduced to nil where a charge has already been made in respect of the injured person under the 1989 Regulations and the injured person has been compensated for that charge. As a result no NHS charge will be levied in respect of the NHS treatment for which compensation has been paid. Where ambulance services have been used to transport the injured person, then NHS charges will still apply for those services as these are not recovered under the 1989 Regulations.

9. Consequential changes are necessary to the information requirements under the 2006 Regulations to enable the administrators of the Scheme to obtain information from the injured person or the hospital concerned in relation to the making of charges under the 1989 Regulations and from the compensator in relation to the inclusion of those charges in the compensation payment.

10. The amendments will apply to NHS charges levied on or after 12th June 2009.

Consultation

11. It was not necessary to consult specifically on this instrument. 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 Scheme introduced in January 2007 which replaced the RTA Scheme has been the subject of a number of consultation exercises

12. 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.

13. The Scottish Executive Health Department and the Department of Health undertook parallel consultation exercises on how such an expanded 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.

14. 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, Scottish and UK Ministers committed to not implementing the expanded Scheme until a study of the ELCI market, carried out by DWP during 2003, was published. The study's final report, issued in December 2003, recommended that implementation of the NHS Cost Recovery Scheme should be postponed for a year, and this recommendation was accepted.

15. 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 principal 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.

16. This consultation included seeking agreement to continue the practice established under the old RTA Scheme of automatically uprating the level of charges each year in line with HCHS inflation. The proposal was agreed by the majority of respondents.

17. 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 DWP, which was developing a programme of work to implement the recommendations of its earlier study, Scottish and UK Ministers agreed to one further postponement of implementation of the Scheme from April 2005 to January 2007.

18. The following bodies were consulted 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

19. The amendments to remove the dual charging anomaly are not deemed to be of major interest.

Financial effects

20. The instrument has no financial effects on the Scottish Government 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.

21. The 2003 Act provides for a parallel Scheme to be operated in England and Wales by the Secretary of State for Health and identical changes to the flat/daily rate and cap have made in England and Wales by the Department of Health. The England and Wales Scheme is also administered by the Compensation Recovery Unit.

**Scottish Government Health Directorates
May 2009**