

**EXPLANATORY MEMORANDUM TO
THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) AMENDMENT
REGULATIONS 2008**

2008 No. 252

- 1.** This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 The purpose of the instrument is to increase the charges recovered from persons who pay compensation in cases where an injured person receives National Health Service hospital treatment or ambulance services.

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

- 3.1 This instrument increases the charges recoverable by virtue of regulations made under Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”), and the Committee’s attention is drawn to the information in paragraph 7 as to how the increases have been calculated.

4. Legislative Background

- 4.1 The NHS has 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.
- 4.2 The Law Commission for England and Wales consulted in 1996 on whether the process of recovery 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.
- 4.3 Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 therefore made provision for the establishment of such a scheme, known as the NHS Injury Costs Recovery (ICR) Scheme. The Regulations governing the operation of the expanded scheme came into force on 29 January 2007. There are three sets of Regulations:
- Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006;
 - Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006;

- Personal Injuries (NHS Charges) (Amounts) Regulations 2007.

4.4 The amounts recoverable under the ICR scheme are specified in regulation 2 of the Personal Injuries (NHS Charges) (Amounts) Regulations 2007 (“the Amounts Regulations 2007”). This instrument increases the amounts recoverable in respect of incidents occurring on or after 1st April 2008.

5. Extent

5.1 This instrument applies to England and Wales. The National Assembly for Wales has been consulted as required by s195(3) of the 2003 Act and is content.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Amounts Regulations 2007 regulate the procedures for the calculation and collection of NHS charges under the ICR scheme. Regulation 2 of the Amounts Regulations 2007 set a simple tariff; a single one-off payment where hospital treatment is provided without admission (out-patient treatment) of £505, a daily rate for each day or part day of admission to hospital, excluding the day of discharge (in-patient treatment), of £620, and £159 per ambulance journey. The maximum amount that can be recovered in relation to any one injury (the cap on charges) is set at £37,100.

7.2 The Department of Health undertook a full consultation in summer 2006 on all the draft Regulations governing operation of the ICR scheme. This included seeking agreement to continue the practice established under the old Road Traffic Act recovery scheme of automatically uprating the level of charges on 1st April every year in line with Hospital and Community Health Service (HCHS) inflation. The proposal was agreed by the majority of respondents.

7.3 The tariff and cap used when the ICR scheme was established on 29 January 2007 were the same as had been in place for the old Road Traffic Act recovery scheme. Ministers decided that it would be inappropriate to uprate the tariffs in April 2007, so soon after the ICR scheme had come into effect. This is therefore the first time the tariffs have been uprated under the ICR scheme and takes account of HCHS inflation for 2006/07 and 2007/08 to correct this. As a result, the increase may appear higher than expected.

7.4 The latest available figure for HCHS inflation is 4.1% for both 2006/07 and 2007/08. Due to the compounding effect of applying two years' worth of increases, a figure of 8.3% will be applied to the tariff and cap from 1 April 2008. The exception to this is the uplift to the ambulance tariff. Last year was the first year that ambulance journeys were captured and therefore, this tariff has only had an uplift of 4.1% based on HCHS inflation. This means that the charge for treatment without admission in respect of injuries occurring on or

after 1 April 2008 will increase from £505 to £547. The charge for treatment with admission in respect of injuries happening on or after 1 April 2008 will increase from £620 to £672 per day, and the charge for transporting a patient by ambulance will increase from £159 to £165. At the same time as the tariff increases, the cap on charges is also increased. This means that the maximum charge to be recovered in relation to any one injury occurring on or after 1 April 2008 will increase from £37,100 to £40,179. This represents roughly 60 days of inpatient treatment using the increased rate.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as the impact on business, charities or voluntary bodies is negligible. The insurance industry is already aware of the automatic amendment of the tariff each April and has already had experience of implementing the change before.
- 8.2 The bulk of these charges are covered by insurance, and will be paid by insurers in addition to the compensation payment which the injured person will have secured. We estimate that the increase in the tariffs will provide additional income to NHS hospitals of £12.7 million per year (the difference between the current charge and the proposed charge multiplied by the latest in/outpatient settlement claims data). It is possible that insurers may choose to pass these increased costs on to their customers through increased insurance premiums.
- 8.3 As the expanded ICR scheme only came into effect on 29th January 2007, the number of cases settled for non motor liability claims is too small to be meaningful in the calculation of the impact on employer and public liability insurance premiums. Moreover, the latest available claims data predates the introduction of the expanded scheme. Thus, estimates of the impact of the increases can only be calculated in relation to motor claims, as under the old Road Traffic Act recovery scheme. On that basis, if we assume the additional costs identified above are spread evenly among all holders of compulsory motor insurance, then the cost per average policy could be expected to rise by 0.12% or around 64p per policy. These estimates are based on the Association of British Insurers Key Facts, which show net motor premiums of £10.3bn, and £551 as the average annual expenditure per household buying motor insurance.
- 8.4 In 2006/07, the Compensation Recovery Unit (CRU, part of the DWP) received a total of £2.1m to administer the scheme on behalf of the Secretary of State for Health (for England and Wales) and the Scottish Ministers (for Scotland). During the same period, the CRU recovered over £128m for NHS hospitals. This tariff increase does not increase the cost of administering the scheme as an automatic facility to increase the level of charges has already been built into the IT system. There are therefore no additional costs to the Exchequer arising from the tariff increase.

9. Contact

Karl Payne at the Department of Health Tel: 0113 2545380 or e-mail: karl.payne@dh.gsi.gov.uk can answer any queries regarding the instrument.