

EXPLANATORY MEMORANDUM TO
THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (AMENDMENT)
REGULATIONS 2019

2019 No. 285

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to increase the charges recoverable from persons who pay compensation to a person for an injury which occurs on or after 1st April 2019 in cases where that injured person receives National Health Service 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 1st April 2019 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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial 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 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 2015 (the "principal Regulations").
- 6.4 The principal Regulations consolidated, but did not materially amend, the previous regulations. The principal Regulations also revised charges in line with inflation (as described in paragraph 7.2 below).
- 6.5 The amounts recoverable under the ICR Scheme from 1st April each year are specified in the table in Schedule 1 to (as referred to in regulation 2 of) the principal Regulations. This instrument increases the amounts recoverable in respect of injuries occurring on or after 1st April 2019. This instrument also revokes earlier, superseded amendments to the principal Regulations.

7. Policy background

What is being done and why?

- 7.1 The principal Regulations make provision, amongst other things, for the calculation of NHS charges under the ICR scheme. The table in Schedule 1 to the principal Regulations provides for a simple set of tariffs which apply to injuries which occurred on or after 1st April in any given year (apart from 2007 where the relevant date is 29th January 2007) but prior to the following 1st April. Each year an increased tariff is specified as applying for that year from 1st April. The current tariffs, for the year starting on 1st April 2018, are a single one-off payment where hospital treatment is provided without admission (out-patient treatment) of £688; a daily rate for each day or part day of treatment with admission to hospital, excluding the day of discharge (in-patient treatment) of £846; and £208 per ambulance journey. The maximum amount recoverable in relation to any one injury (the cap on charges) is set at £50,561.
- 7.2 The Department of Health undertook a full consultation in summer 2006 on all the draft Regulations governing operation of the ICR scheme. It was not necessary to consult on the principal Regulations when they were made in 2015 as they merely consolidated, but did not materially amend, the previous regulations and updated charges as set out below. This included seeking agreement to continue the practice established under the old Road Traffic Act recovery scheme of automatically updating the level of charges on 1st April every year in line with Hospital and Community Health Services (HCHS) inflation. The proposal was agreed by the majority of respondents.

7.3 HCHS inflation is based on expenditure specific to the hospital sector and is calculated by the Department for Health and Social Care by combining the indices for NHS pay and price inflation using an approximate weighting of 59.6/40.4. The latest estimate for HCHS inflation is 5.4% for 2019/20.

7.4 Consequently, the charges (rounded to the nearest whole pound) for treatment or services in respect of injuries occurring on or after 1st April 2019 will increase as follows:

Hospital treatment without admission (out-patient) from £688 to £725; Treatment with admission to hospital (in-patient) from £846 to £891; and, Ambulance journey from £208 to £219. The maximum amount that can be recovered in relation to any one injury (the cap on charges) increases from £50,561 to £53,278.

7.5 We estimate that the increase in the tariffs will provide additional income to NHS hospitals of £10.6m per year (based on the difference between the current charges and the increased charges provided for by these Regulations applied to the latest (2018) activity data). As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

7.6 (Note: the £10.6m figure includes ambulance journeys.)

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 Consolidation of legislation is not required and therefore not being done.

10. Consultation outcome

10.1 It was not necessary to consult on the instrument. There was a 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 the Department of Health's public consultation in 2006 on the draft Regulations governing the ICR scheme (also see paragraphs 6.2 and 7.2 in respect of consultation in relation to the principal Regulations).

10.2 Consultation with Welsh Ministers was undertaken (see paragraph 4.1) and is mentioned in the preamble.

11. Guidance

11.1 It is not considered necessary to issue guidance on the amendments set out in the instrument. The uplift in the tariff is a routine event that does not require any additional explanation.

11.2 The Department of Health and Social Care is in the process of writing to the Association of British Insurers and the Motor Insurance Bureau to make them aware of the likely scale of increases.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is very minor as set out in the paragraphs below.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact on business, charities or voluntary bodies is negligible. There is no expansion or reduction in the level of regulatory activity as a consequence of this instrument. The scheme is already in place, there is no change in policy and the uplift to the tariff (being based on HCHS inflation) was agreed with the insurance industry as part of the consultation process in 2006. This process for uprating the tariff of charges is a longstanding annual event that simply maintains the real-terms values of the funds recovered for the NHS.
- 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.
- 12.5 Any impact on premiums due to this uplift is likely to be negligible. The £10.6m additional income for the NHS can be broken down as £7.06m for road traffic accidents and £3.54m for non-road traffic accidents (using rounded figures).
- 12.6 If we assume the £7.06m for road traffic accidents is spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.07% or around 46p per policy. These figures are calculated using 2017 estimates for net motor premiums of £10.229bn and estimated average annual expenditure per household buying motor insurance in 2016/17 of £663 based on information provided by the Association of British Insurers.
- 12.7 The remaining £3.54m is likely to be a cost pressure on public liability and employer insurance. If this cost was transferred to the population, for e.g. by lower wages - to cover the increase in employer insurance contributions, and increased tax - to cover the public liability insurance, it would cost around 11p per person.
- 12.8 In 2017/18, the Compensation Recovery Unit (CRU, part of the DWP) received a total of **£2.6m** 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 around **£200m** for NHS hospitals. Costs are therefore **1.30%** of recoveries. This tariff increase does not increase the cost of administering the scheme as a 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.
- 12.9 Nor are there any additional administration costs for the compensators as the governing legislation requires them to report all incidences of personal injury compensation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses but has minimal impact on businesses including small firms employing up to 50 people as explained in paragraph 12.1 to 12.9 above.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through an annual review. The change in the tariff is an annual event that seeks to maintain the levels of funds recovered in real terms. The tariff and its impact will be reviewed and adjusted using the latest available data.

15. Contact

- 15.1 Karl Payne at the Department for Health and Social Care Telephone: 01132 545380 or email: karl.payne@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tim Brown, Deputy Director for NHS Cost Recovery, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nicola Blackwood at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.