

**EXPLANATORY MEMORANDUM TO
THE PERSONAL INJURIES (NHS CHARGES) (REVIEWS AND APPEALS)
AMENDMENT REGULATIONS 2007**

2007 No. 1613

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

2. Description

2.1 This instrument makes provision for managing the procedure as to the proper making of an appeal in respect of a certificate of NHS charges, issued by virtue of provisions in Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”).

2.2 It amends regulation 6 of the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006 (S.I. 2006/3398) (“the principal Regulations”) by placing the responsibility for managing the procedure for the proper making of an appeal on the Secretary of State rather than the appeal tribunal.

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

3.1 None.

4. Legislative Background

4.1 Part 3 of the 2003 Act provides the legislative framework for the NHS Injury Costs Recovery Scheme (“the ICR scheme”) that came into force on 29th January 2007. Section 157 of the 2003 Act makes provision for the making of appeals against certificates of NHS charges, and gives the Secretary of State powers to make regulations concerning the procedure to be followed in dealing with such appeals. The principal Regulations are made in exercise of those powers. They are one of a group of three instruments (see paragraph 7.3 below) which between them make provision for the general operation of the ICR scheme, the amounts to be recoverable under the scheme and other matters linked to those amounts, and the arrangements for reviews and appeals.

4.2 This instrument amends the principal Regulations in respect of the proper procedure to be followed where an appeal is not made in the approved format or does not include all the required particulars, by placing responsibility for managing these procedures on the Secretary of State rather than the appeal tribunal.

4.3 In accordance with section 195(3) of the 2003 Act, the National Assembly for Wales has been consulted before the making of this instrument. Consultation with the

Council on Tribunals, in accordance with section 8 of the Tribunal and Inquiries Act 1992, has also been carried out.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The NHS has been able to recover the cost of treating the 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 Act (NHS Charges) 1999. However, the 2003 Act extended the legislative framework allowing wider recovery of costs; Part 3 of the 2003 Act makes provision for a scheme to be established to recover NHS charges in all cases where personal injury compensation is paid to an injured person. The ICR scheme came into effect on 29 January 2007, and subsumes the previous Road Traffic Act scheme.

7.2 The legislation places a legal obligation on insurers and solicitors to inform the Secretary of State whenever a claim is made for personal injury compensation. Day-to-day operation of the scheme is carried out on behalf of the Secretary of State by the Compensation Recovery Unit (CRU), part of the Department for Work and Pensions, so in practice notification is made to them.

7.3 The operation of the ICR scheme is governed by three sets of Regulations:

- Personal Injuries (NHS Charges) (Amounts) Regulations 2007;
- Personal Injuries (NHS Charges) (General) Regulations and Road Traffic (NHS Charges) (Amendment) Regulations 2006;
- the principal Regulations.

7.4 The principal Regulations deal with the review procedure for dealing with cases where compensators disagree with the amount of charges being levied, and the appeal process if disputes cannot be resolved on review. In normal circumstances, compensators are required to pay any charges levied before the appeal process can be invoked, as a means of discouraging spurious appeals intended merely to delay payment.

7.5 All three sets of Regulations were subject to a full public consultation before being made. Regulation 6 of the principal Regulations, which made it the responsibility of the appeal tribunal to manage the procedure as to the proper making of an appeal, reflected the results of the consultation. After the Regulations had come into force however, concerns were expressed that it was inappropriate for the appeal tribunal to be responsible for the actions set out in regulation 6. The Council on Tribunals concurred with this view, and it was decided that the principal Regulations would be amended to place responsibility with the Secretary of State (in practice with the CRU acting on the Secretary of State's behalf). This instrument gives effect to that decision.

7.6 So far, no appeals have yet been made under the ICR scheme, but this amendment is being made as soon as possible to avoid the possibility of any appeals coming forward while the original provisions of regulation 6 are still in force.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

9. Contact

9.1 Mrs Elizabeth Ryan at the Department of Health Tel: 0113 254 5650 or e-mail: elizabeth.ryan@dh.gsi.gov.uk can answer any queries regarding this instrument.