EXPLANATORY MEMORANDUM TO

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 895

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care ("DHSC") and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Karin Smyth MP, Minister of State for Health (Secondary Care) at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Catherine Davies, Deputy Director for the EU Strategy and Cost Recovery Division, at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Junaid Tamimu, Policy Manager at the Department of Health and Social Care; nhs.injurycostrecovery@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to increase the charges recoverable by the NHS for an injury which occurs on or after 1st October 2024 under the NHS Injury Cost Recovery Scheme ("ICR Scheme"). Under the ICR Scheme charges are recoverable from persons who pay compensation to a person for an injury where that injured person receives NHS hospital treatment or ambulance services.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is England and Wales. Welsh Ministers have been consulted as required by section 195(3) of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") and they are content.

4.3 The territorial application of this instrument is England and Wales.

5. Policy Context

What is being done and why?

5.1 DHSC undertook a full consultation in summer 2006 on regulations governing the operation of the ICR scheme. This included seeking agreement to continue the

practice established under the former Road Traffic (NHS Charges) Act 1999 recovery scheme of automatically uprating 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.

5.2 The table in Schedule 1 to the Personal Injuries (NHS Charges) (Amounts) Regulations 2015 ("Principal Regulations") therefore provides yearly tariffs which apply to injuries which occurred on or after that year's date.

5.3 The HCHS inflation in the tariffs is calculated by NHS England in their annual uplift to the NHS Payment Scheme, formerly the NHS national tariff – the set of prices and rules used by providers of NHS care and commissioners to deliver the most efficient, cost-effective care to patients.

5.4 The charges (rounded to the nearest whole pound) for treatment or services in respect of injuries occurring on or after 1st October 2024 will increase as follows:

- Ambulance services from £249 to £256.
- Hospital treatment without admission (out-patient) from £825 to £848.
- Treatment with admission to hospital (in-patient) from £1,014 to £1,042.
- The maximum amount that can be recovered in relation to any one injury (the cap on charges) increases from £60,610 to £62,272.

5.5 We estimate that the increase in the tariffs will provide additional income to the NHS of around £4.9m per year (based on the difference between the current charges and the increased charges provided for by this instrument applied to the latest (2023) activity data). As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

5.6 From October 2024 on, the routine annual ICR tariff uplift will occur in October, rather than April, as this will allow the uplift to fully reflect the impact of NHS pay settlements inflation.

5.7 In 2023/24, the Compensation Recovery Unit ("CRU"), part of the Department for Work and Pensions received a total of £2.4m to administer the scheme on behalf of the Secretary of State for Health and Social Care (for England and Wales) and the cabinet Secretary of Health and Social Care (Scotland). During the same period, the CRU recovered around £180m for NHS hospitals. This tariff increase does not increase the cost of administering the scheme. A facility to increase the level of charges has already been built into the Department for Work and Pensions IT system. There are therefore no additional costs to the Exchequer arising from the tariff increase.

What was the previous policy, how is this different?

5.8 The previous tariffs for injuries that occurred between 1st April 2024 and 30th September 2024 were lower, as the tariffs were calculated by using an estimate of HCHS inflation. The October 2024 tariff uplift has taken into account the full impact of recent NHS pay settlements on healthcare inflation and will only apply to injuries that occur on or after 1st October 2024.

6. Legislative and Legal Context

How has the law changed?

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 makes provision for the establishment of a scheme, known as the Injury Cost Recovery Scheme. The Regulations governing the operation of the expanded scheme came into force on 29 January 2007.

6.4 There are three sets of key Regulations:

- The Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges)
- (Amendment) Regulations 2006 (S.I. 2006/3388);
- The Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006 (S.I. 2006/3398); and

the Principal Regulations.

6.5 The Principal Regulations consolidated but did not materially amend previous regulations. This instrument further amends the Principal Regulations to increase the amount recoverable in respect of injuries occurring on or after 1st October 2024 as specified in Regulation 2 of the Personal Injuries (NHS Charges) (Amounts) (Amendment) (No. 2) Regulations 2024.

6.6 This instrument also revokes the Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2024 (S.I. 2024/220).

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As required by section 195(3) of the 2003 Act, consultation with the Welsh Ministers was undertaken and they have confirmed they are content with the Regulations.

7.2 It was not necessary to consult more widely on this instrument. However, DHSC informed the insurance industry through a written letter in February 2024 that the annual tariff uplift would move from April to October starting from 2024.

8. Applicable Guidance

8.1 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as it only seeks to increase a charge under the scheme and it's anticipated that the increase will have no or a low-level impact on the private, voluntary or public sector.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is very minor.

9.3 The legislation does impact small or micro businesses.

9.4 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the bulk of the NHS charges paid under the ICR Scheme 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.

9.5 Any impact on premiums due to this uplift is likely to be negligible. The additional income of around £4.9m for the NHS can be broken down as £3.3m for road traffic accidents and £1.6m for non-road traffic accidents (using rounded figures).

9.6 If we assume the £3.3m for road traffic accidents is spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.02% or around 17 pence per policy. These figures are calculated using 2024 estimates for net motor premiums of £17.3bn and estimated average annual expenditure per household buying motor insurance in 2024/25 of £882 based on information provided by the Association of British Insurers.

9.7 The remaining £1.6m is likely to be a cost pressure on public liability and employer insurance. If this cost was transferred to the population, for example by lower wages – to cover the increase in employer insurance contributions, and increased tax – to cover the public liability insurance, it would cost around 5 pence per person.

9.8 The impact on the public sector is very minor.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to review and periodically adjust the tariffs using the latest available data.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument increases the charges recoverable in relation to injuries which occur on or after 1st October 2024 by virtue of regulations made under the 2003 Act. The Joint Committee on Statutory Instruments attention is drawn to the information in paragraph 5 as to how the increases have been calculated and the annual ICR tariff uplift moved from April to October as stated in the Explanatory Memorandum to the Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2024.

11.2 The instrument is being laid on 3rd September 2024, allowing more than 21 days before it comes into force on 1st October, which is the next Common Commencement

Date. Due to the common commencement date being a set date, some of the parliamentary scrutiny period falls during the recess period on this occasion.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023.