EXPLANATORY MEMORANDUM TO

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) AMENDMENT REGULATIONS 2012

2012 No. 387

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. 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 in cases where that injured person receives National Health Service hospital treatment or ambulance services. The increase in charges relates to an uplift Hospital and Community Health Services (HCHS) annual inflation.

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 Context

4.1 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 though 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 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.

4.3 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 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 principal Regulations"). This instrument increases the amounts recoverable in respect of injuries occurring on or after 1st April 2012.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Welsh Ministers have been consulted as required by section 195(3) of the 2003 Act and are content.

6. European Convention on Human Rights

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

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. Regulation 2 of the principal Regulations provides for a simple set of tariffs which are uprated annually. The current tariffs are a single one-off payment where hospital treatment is provided without admission (out-patient treatment) of £600; a daily rate for each day or part day of treatment with admission to hospital, excluding the day of discharge (in-patient treatment) of £737; and £181 per ambulance journey. The maximum amount that can be recovered in relation to any one injury (the cap on charges) is set at £44,056.

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 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 combining the indices for NHS pay and price inflation using an approximate weighting of 58/42. The latest estimate for HCHS inflation is 2.5% for 2011/12.

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 2012 will increase as follows:

Hospital treatment without admission (out-patient) from £600 to £615;
Treatment with admission to hospital (in-patient) from £737 to £755;

Ambulance journey from £181 to £185
Maximum amount that can be recovered in relation to any one injury (the cap on charges) £44,056 to £45,153.

7.5 We estimate that the increase in the tariffs will provide additional income to NHS hospitals of £5.2m per year (based on the difference between the current charge and the proposed charge applied to the latest (2011) activity data. As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

(Note: the £5.2m figure includes ambulance journeys)

8. Consultation

8.1 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.

9. Guidance

9.1 It is not considered necessary to issue guidance on the amendments proposed by the Regulations. The uplift in the tariff is a routine event that does not require any additional explanation.

9.2. We propose to write separately to the Association of British Insurers and the Motor Insurance Bureau who are already aware of the likely scale of increases.

10. Impact

10.1 A full Impact Assessment (IA) has not been prepared for this instrument, as 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.

10.2 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.

10.3 As the expanded ICR scheme only came into effect on 29th January 2007, and cases have a settlement lag of a year or more, the data on non-motor liability cases settled is not yet sufficiently reliable enough to be meaningful in the calculation of the impact on employer and public liability insurance premiums. Thus, 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 0.05% or around 28p per policy. These figures are calculated using 2012/13 estimates for net motor premiums of £11.3bn and estimated average annual expenditure per household buying

motor insurance of £614 based on information provided by the Association of British Insurers.

10.4 In 2010/11, the Compensation Recovery Unit (CRU, part of the DWP) received a total of £2.4m 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 £195m for NHS hospitals. 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.

11 Regulating Small Business

11.1 This instrument applies to small business but has a minimal impact on business including small firms employing up to 20 people as explained in paragraph 10.1 to 10.4 above.

12. Monitoring & Review

12.1 The change in the tariff is an agreed annual event that seeks to maintain the levels of funds recovered in real terms. The tariff is reviewed and adjusted annually using the latest available data.

12.2 The Department will also conduct a Post Implementation Review of the NHS Injury Cost Recovery scheme during 2012/13 in order to evaluate the effectiveness of the scheme as well as to help identify any efficiencies gains or improvements to the scheme.

13. 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.