EXPLANATORY MEMORANDUM TO

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (AMENDMENT) REGULATIONS 2021

2021 No. 186

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 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 this instrument is to increase the charges recoverable by the NHS for an injury which occurs on or after 1st April 2021 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.

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 2021 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 this instrument is subject to the 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 made provision for the establishment of a scheme, known as the NHS Injury Cost Recovery ("ICR") Scheme. The Regulations governing the operation of the expanded scheme came into force on 29 January 2007.

6.4 There are three sets of 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 Personal Injuries (NHS Charges) (Amounts) Regulations 2015 (S.I. 2015/295) ("the Principal Regulations").

6.5 The Principal Regulations consolidated, but did not materially amend, previous regulations. The Principal Regulations also revised charges in line with inflation.

6.6 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 2021. This instrument also revokes the Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2020 (S.I. 2020/285).

7. Policy background

What is being done and why?

7.1 DHSC undertook a full consultation in summer 2006 on all the draft regulations governing the 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 Services ("HCHS") inflation. The proposal was agreed by the majority of respondents.

7.2 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 uprated charges as set out below.

7.3 The Principal Regulations make provision, amongst other things, for the calculation of NHS charges under the ICR scheme. The table in Schedule 1 to (as referred to in Regulation 2 of) 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, and each year an increased tariff is specified in line with HCHS inflation as applying for that particular year from 1st April.

7.4 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 60.10/39.9. The latest forecast for HCHS inflation is 0.21% for 2021/22.

7.5 Consequently, the charges (rounded to the nearest whole pound) for treatment or services in respect of injuries occurring on or after 1st April 2021 will increase as follows:

- Hospital treatment without admission (out-patient) from £743 to £744;
- Treatment with admission to hospital (in-patient) from £913 to £915; and
- Ambulance journey from £224 to £225. The maximum amount that can be recovered in relation to any one injury (the cap on charges) increases from £54,566 to £54,682.

7.6 We estimate that the increase in the tariffs will provide additional income to NHS hospitals of £0.41m per year (based on the difference between the current charges and the increased charges provided for by this instrument applied to the latest (2020) 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 £0.41m figure includes ambulance journeys)

8. European Union (Withdrawal) Act 2018/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 2018

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 Except in relation to paragraph 10.3 below, it was not necessary to consult on this instrument.

10.2 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 DHSC's public consultation in 2006 on the draft regulations governing the ICR scheme (also see paragraph 7.2 in respect of consultation on the Principal Regulations).

10.3 As required by section 195(3) of the 2003 Act, consultation with the Welsh Ministers was undertaken (see paragraph 4.1).

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 DHSC 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.

12.2 The impact on the public sector is very minor.

12.3 An Impact Assessment has not been prepared for this instrument because this does not constitute a regulatory provision under section 22 of the Small Business, Enterprise and Employment Act 2015, as it only seeks to amend a charge under the scheme. The ICR 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 £.41m additional income for the NHS can be broken down as £0.28m for road traffic accidents and £0.13m for non-road traffic accidents (using rounded figures).

12.6 If we assume the £0.28m for road traffic accidents is spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.003% or around 1.5p per policy. These figures are calculated using 2019 estimates for net motor premiums of £8.805bn and estimated average annual expenditure per household buying motor insurance in 2017/18 of £726 based on information provided by the Association of British Insurers.

12.7 The remaining £0.13m 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 0.4p per person.

12.8 In 2020/21, 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 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 This instrument applies to activities that are undertaken by small businesses but has a minimal impact on business, including small firms employing up to 50 people, as explained in paragraphs 12.1 to 12.9 above.

14. Monitoring & review

14.1 The approach to the monitoring of this legislation is to review and adjust annually using the latest available data. The change in tariff is an agreed annual event that seeks to maintain the level of funds recovered in real terms.

15. Contact

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

15.2 Deborah Persaud, Deputy Director for NHS Cost Recovery policy, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 The Minister of State for Health, Ed Argar MP, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.