POLICY NOTE

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2023

SSI 2023/243

1. The above instrument was made in exercise of the powers conferred by sections 153(2) and (5), 163(1) and 195(1) and (2) of the Health and Social Care (Community Health and Standards Act 2003 ("the 2003 Act"). The instrument is subject to negative resolution procedure.

Purpose of the Instrument

These regulations amend the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006. The purpose of the instrument is to increase the charges ("NHS charges") recovered from persons who pay compensation ("compensators") in cases where an injured person receives National Health Service hospital treatment or ambulance services. The increase in charges relates to an uplift for Hospital and Community Health Service (HCHS) inflation.

Policy Objectives

2. The new NHS charges will apply in cases where compensation has been made in respect of incidents occurring on or after 2 October 2023. The NHS charges will be increased as follows:

	Rate	
	Current	**From 2 October 2023**
Where the injured person was provided with NHS ambulance services for the purpose of taking him/her to a hospital for NHS treatment (for each journey)	£238	£243
Where the injured person received NHS treatment at a hospital in respect of his/her injury but was not admitted to hospital (flat rate)	£788	£806
Where the injured person received NHS treatment at a hospital in respect of his/her injury and was admitted to hospital (daily rate)	£968	£991
The cap (being the maximum amount that will be claimed from a compensator) in any one case.	£57,892	£59,248

3. The NHS charges are revised annually from 1 April to take account of Hospital and Community Health Services (HCHS) pay and price inflation. The last revision took effect from 1 April 2023, applying the estimate for HCHS inflation at that time of 2.8%. As a result of subsequent NHS pay deals the latest estimate for HCHS inflation is 5.3%
4. This instrument increases the charges, with effect from 2 October 2023. This mid-year tariff uplift addresses the significant gap between forecast and actual pay inflation.

5. The Scheme is administered on behalf of Scottish Ministers by the Compensation Recovery Unit (CRU) of the Department of Work and Pensions (DWP).

Consultation

6. For more than 70 years, hospitals have been able to recover the costs of treating the victims of road traffic accidents where the injured person has made a successful claim for personal injury compensation. The arrangements for this were streamlined and modernised through the provisions of the Road Traffic (NHS Charges) Act 1999 (RTA). The Scheme introduced in January 2007 to replace the RTA Scheme has been the subject of a number of consultation exercises.

7. The Law Commission for England and Wales consulted in 1996 on whether the recovery of NHS costs should take place not just following road traffic accidents but in all cases where people claim and receive personal injury compensation. More than three quarters of the people who responded to the consultation agreed with the Commission's view that the NHS should be able to recover its costs from the liable party and that the NHS, and therefore the taxpayer should not have to pay for the treatment of such patients. Rather, those causing injury to others should pay the full cost of their actions, including the costs of NHS treatment.

8. The then Scottish Executive Health Department and the Department of Health undertook parallel consultation exercises on how such an expanded Scheme might operate in the autumn of 2002. The responses in the main supported the Scheme and proposals for its administration. There were some concerns, however, about whether the Employers' Liability Compulsory Insurance (ELCI) marker was sufficiently robust to cope with the expansion.

9. Following on from the consultation the necessary legislative framework was put in place as Part 3 of the 2003 Act. However, in response to the concerns expressed, Scottish and UK Ministers committed to not implementing the expanded Scheme until a study of the ELCI market, carried out by DWP during 2003, was published. The study's final report, issued in December 2003, recommended that implementation of the NHS Cost Recovery Scheme should be postponed for a year, and this recommendation was accepted.

10. A further consultation was undertaken at the end of 2004 covering in detail the draft Regulations that would govern the Scheme. There are three sets of principal regulations:

> The Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006, which these regulations amend;
> The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006;
> The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006.

11. The consultation included seeking agreement to continue the practice established under the old RTA Scheme of automatically uprating the level of charges each year in line with HCHS inflation. The proposal was agreed by the majority of respondents.

12. The consultation raised further concerns about the planned timing for introducing the Scheme as the ECLI market was still considered fragile. After further discussions with DWP, Scottish and UK Ministers agreed to one further postponement of implementation of the Scheme from April 2005 to January 2007.

13. The following bodies were consulted in both the 2002 and 2004 consultations:

NHS Boards (and NHS Trusts)

Scottish NHS Confederation

The Law Society of Scotland

The Scottish Law Agents Society

The Faculty of Actuaries

Motor Insurers Bureau

Scotland Patients Association

Scottish Association of Health Councils

The Faculty of Advocates

The Scottish Consumer Council

Association of British Insurers

Various Insurance Bodies

14. It was not necessary to consult on this instrument. Nonetheless, recognising that the mid-year uplift of charges aligns with the agreed principle of uprating the level of charges each year in line with HCHS inflation, but that the mid-year timing is unprecedented, as good practice, the Scottish Government Directorate for Health and Social Care Finance and Governance, and the Department of Health and Social Care (DHSC) carried out parallel truncated, targeted consultation on this specific matter. The following bodies were contacted in this consultation:

NHS Boards (and NHS Trusts)

The Association of Personal Injury Lawyers (APIL)

The Forum of Insurance Lawyers (FOIL)

Association of British Insurers (ABI)

15. The consultation asked if respondents supported the mid-year tariff increase from October 2023 and sought any further comments or suggestions on the proposed increase, including any equality impacts.

16. Consultation responses were either neutral or supportive of the proposed mid-year uplift. No negative responses were received. One respondent commented that they did not wish to see a mid-year review become the norm. Respondents also suggested a wider reform of the Injury Cost Recovery scheme.

Impact Assessments

17. 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 principle of uplifting tariff 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 by the NHS. This mid-year uplift reflects that principle and addresses the difference between actual pay inflation and forecast pay inflation applied during the annual (April) uplift.

18. 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 insurance premiums.

19. Any impact on premiums due to this uplift is likely to be negligible. The £8.63m estimated additional income for the NHS (relative to the funding generated in 2022/23 and including the tariff uplift from April 2023) can be broken down as £5.62m for road traffic accidents and £3.01m for non-road traffic accidents (using rounded figures). As this cash increase is in line with HCHS inflation, it will simply maintain the real-terms value of current income.

20. If we assume the £5.62m for road traffic accidents is spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.06% or around 52p per policy. These figures are calculated using 2022 estimates for net motor premiums of £9.681bn and estimated average annual expenditure per household buying motor insurance in 2023/24 of £887 based on information provided by the Association of British Insurers.

21. The remaining £3.01m 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 9p per person.

Financial Effects

22. No Business and Regulatory Impact Assessment (BRIA) is necessary as the financial effects of the instrument on the Scottish Government, local government or on business is negligible. Furthermore, it should be noted that the liability for charges rests with the compensator, and not with the person who has been compensated.

23. The 2003 Act provides for a parallel Scheme to be operated in England and Wales by the Secretary of State for Health and Social Care and identical changes to the flat/daily rate and the cap have been made in England and Wales by the Department of Health and Social Care. The England and Wales Scheme is also administered by the Compensation Recovery Unit.

Scottish Government Health and Social Care Directorate
August 2023