POLICY NOTE

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015/81

1. The above instrument was made in exercise of the powers conferred by sections 153(2) and (5), 168 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.

2. These Regulations amend the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006.

Background

3. 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) annual inflation.

Increase in NHS charges

4. The new NHS charges will apply in cases where compensation has been made in respect of incidents occurring on or after 1st April 2015. The NHS charges will be increased as follows:

	Current	**From 1st April 2015**
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)	£192	£195
Where the injured person received NHS treatment at a hospital in respect of his/her injury but was not admitted to hospital (flat rate)	£637	£647
Where the injured person received NHS treatment at a hospital in respect of his/her injury and was admitted to hospital (daily rate)	£783	£796
The cap (being the maximum amount that will be claimed from a compensator) in any one case resulting in admission to hospital	£46,831	£47,569

5. The NHS charges are revised annually to take account of Hospital and Community Health Services (HCHS) pay and price inflation. The latest estimate for HCHS inflation is 1.6%.

6. The Scheme is administered on behalf of Scottish Ministers by the Compensation Recovery Unit (CRU) of the Department of Work and Pensions (DWP) in accordance with an agency arrangement under section 93 of the Scotland Act 1998.

Consultation

7. It was not necessary to consult specifically on this instrument. 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. The Scheme introduced in January 2007 to replace the RTA Scheme has been the subject of a number of consultation exercises.

8. 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.

9. The 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) market was sufficiently robust to cope with the expansion.

10. Following on from that 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.

11. 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;
- The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006;
- The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006.

12. 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.

13. The consultation raised further concerns about the planned timing for introducing the Scheme, as the ELCI 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.

14. 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

Financial effects

15. The instrument has no financial effects on the Scottish Government or local government. Furthermore, it should be noted that the liability for charges rests with the compensator, and not with the person who has been compensated.

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

Scottish Government Health Directorates
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