EXPLANATORY MEMORANDUM TO

THE PERSONAL INJURIES (NHS CHARGES) (REVIEWS AND APPEALS) AND ROAD TRAFFIC (NHS CHARGES) (REVIEWS AND APPEALS) AMENDMENT REGULATIONS 2013

2013 No. 2586

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to amend the regulations that support the recovery of NHS charges through the NHS Injury Cost Recovery scheme[1] to accord with the changes in the appeals process. The regulations being amended are the Road Traffic (NHS Charges) (Reviews and Appeals) Regulations 1999 ("the 1999 Regulations") and the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006 ("the 2006 Regulations").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument revokes provisions in the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006 ("the 2006 Regulations") - http://www.legislation.gov.uk/uksi/2006/3398/contents/made which provide for appeals to be sent to the decision maker and make provision related to the process of and the time for making an appeal. Instead, appeals will now be lodged directly with Her Majesty's Courts and Tribunal Service (HMCTS) and continue to be dealt with under the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules ("the Rules") (S.I. 2008/2835) as amended by the Tribunal Procedure (Amendment) Rules 2013 (S.I. 2013/477). The Rules (the most relevant is Rule 22) will govern the appeal procedure and the time within which an appeal must be brought.

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.

[1] Established under Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 to recover NHS treatments costs where the injured party goes onto make a personal injury compensation claim. http://www.legislation.gov.uk/ukpga/2003/43/part/3

7. Policy background - What is being done and why?

7.1 The Department is amending the 1999 Regulations and the 2006 Regulations to enable appeals to be lodged with the First-tier Tribunal ("Tribunal") – known as "direct lodgement", rather than with the Compensation Recovery Unit (CRU) which is part of the Department for Work and Pensions (DWP). The NHS Injury Cost Recovery scheme is administered on behalf of the Department by the CRU. They manage the process from the registration of a claim through to recovering the NHS charges for treatment, by paying the money recovered direct to NHS and ambulance trusts.

7.2 The procedure for appealing is set out in the Rules. Currently, when a person wishes to appeal against a certificate of NHS charges and against a waiver decision, under the procedure set out in the 1999 and 2006 Regulations they must do so by sending a written request to the decision maker (this is the Secretary of State but in practice these are sent to CRU as identified in 7.1). In addition Rule 23 (cases in which the notice of appeal is sent to the decision maker) applies to these cases. The CRU undertakes the initial administration of the appeal, referring any questions of validity to the Tribunal. Following consideration of revision of the disputed decision and the gathering of any additional evidence, the CRU sends the appeal request to HMCTS. It is only at this point, some considerable time after the appeal was made, that action is started to arrange a Tribunal hearing.

7.3 The procedure described at 7.2 will continue to apply to appeals received by CRU before 7th November (regulation 4 (transitional and savings provision)).

7.4 Rule 22 (cases in which the notice of appeal is to be sent to the tribunal) of, and Schedule 1 (time limits for providing notices of appeal) to, the Rules will apply to appeals made on or after 7th November 2013. They deal with the manner in which an appeal is made and the timings that will apply.

7.5 The CRU therefore will no longer be responsible for the initial administration of the appeal, but will fulfil its proper role as respondent to the appeal.

7.6 The new process will provide greater transparency for the appellant, with clearly defined responsibilities in terms of who administers the appeal and who the respondent is. All the rules on the appeals process will be in one place and be governed by the Rules.

8. Consultation

8.1 The Tribunal Procedure Committee conducted a consultation exercise on the proposed rule amendments to make provision for the direct lodgement of appeals. This consultation commenced on 26 March 2012 and closed 15 June 2012.
http://www.justice.gov.uk/downloads/about/moj/advisory-groups/consultation-tribunal-procedure-committee.pdf

8.2 The Committee received 24 responses to the consultation, the majority of which supported the introduction of direct lodgement. Those disagreeing did so on the grounds that direct lodgement of appeals would introduce delays, or that it was more efficient for the appeal to be lodged with the decision-maker. The Committee were not persuaded by these objections.

9. Guidance

9.1 The NHS Injury Cost Recovery scheme is administered on behalf of the Department by the CRU. As such; they will update their Decision Maker's Guidance to reflect the new Regulations in relation to benefits payments. The CRU will also update their on-line guidance in respect of NHS Injury Cost Recovery cases. The CRU will also issue a mailshot to their industry contacts and their professional bodies.

10. Impact

10.1 A full Impact Assessment (IA) has not been prepared for this instrument, as there is no impact on business or civil society organisations. The changes are purely procedural. The Department will ensure that CRU's guidance is updated so that anyone wishing to make an appeal is provided with the correct information on the new processes.

10.2 The changes required are as a consequence of changes to the appeals process for NHS charges which are now no longer to be sent to the decision maker. Instead, appeals will now be lodged directly with HMCTS and the Rules (particularly Rule 22) will govern the appeal procedure and the time within which an appeal must be brought.

11 Regulating Small Business

11.1 This instrument applies to small businesses but has a minimal impact on businesses including small firms employing up to 20 people as explained in paragraph 10 above.

12. Monitoring & Review

12.1 The number and subject matter of appeals made by individuals to the First-tier and Upper Tribunals – *this information is published quarterly by Her Majesty's Courts and Tribunals Service, and is available on the GOV.UK Website:* https://www.gov.uk/government/publications/quarterly-statisticsfor-the-tribunals—2

12.2 The success rates of appeals made by individuals to the First-tier and Upper Tribunals – *this is current practice and is published as above;*

12.3 The number and success rates of appeals lodged by the Department against First-tier Tribunal decisions – *this information is already collected and published as above.*

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.