EXPLANATORY MEMORANDUM TO

The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2021

S.R. 2021 No. 47

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health, to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under powers conferred by Articles 5(2) and (5) and 19(3) of the Recovery of Health Services Charges (Northern Ireland) Order 2006 and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the rule is to increase the charges recovered from persons who pay compensation ("compensators") in cases where an injured person receives health services hospital treatment or ambulance services from 1 April 2021. The increase in charges relates to an uplift for Hospital and Community Health Service (HCHS) annual inflation.

3. Background

3.1. For more than 70 years hospitals have been able to recover the costs of treating the casualties of road traffic accidents where the injured person has made a successful claim for personal injury compensation. Part II of the Health and Personal Social Services Act (Northern Ireland) 2001 provided for the introduction of a new and improved scheme for collection of the recoverable hospital costs.

3.2. The Recovery of Health Services Charges (Northern Ireland) Order 2006 ("the Order"), which was made after appropriate consultation and assessments, provides for the extension of the scheme to include all cases where compensation is paid in respect of an injury and to add ambulance costs. The expanded scheme came into operation from 29 January 2007 and applies to all such injuries occurring on or after that date. Part II of the 2001 Act continues to apply in respect of accidents before that date.

3.3. Recovery of health services charges is carried out for the Health and Social Care Trusts by the Compensation Recovery Unit (CRU), a branch of the Department for Communities. Recovery is mainly from insurance companies and does not affect the level of compensation paid to the injured person.

4. Legislative Context

4.1. The Order confers powers on the Department to make regulations to bring the extended recovery scheme into full effect. There are four such Statutory Rules: (i) The Recovery of Health Services Charges (Amounts) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 507); The Recovery of Health Services Charges (General) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 536); (iii) The Recovery of Health Services Charges (Reviews and Appeals) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 24); and (iv) The Recovery of Health Services

Charges (Consequential Provisions) Order (Northern Ireland) 2007 (S.R. 2007 No. 142).

4.2. The amounts recoverable are specified in regulation 2 of The Recovery of Health Services Charges (Amounts) Regulations (Northern Ireland) 2006 ("the principal Regulations"). This Rule increases the amounts recoverable under the principal Regulations in respect of incidents occurring on or after 1 April 2021.

5. Policy Background

5.1. In 2003 the Department undertook a public consultation on the proposed extension of the scheme. The overall level of response was low and the responses received showed a large majority of interests (about 75% of responders) in favour of the proposed extension. The draft Order was issued for consultation in 2004 and the various sets of draft regulations were consulted on in 2006. The consultation on the regulations included a proposal that, in keeping with the then existing scheme, the tariff of charges should continue to remain the same as those set by the Department of Health and Scottish Assembly for the equivalent scheme in GB and should rise every April in line with Hospital and Community Health Services (HCHS) inflation. No opposition to the proposal was expressed.

5.2. 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 60/40. The latest estimate for HCHS inflation is 0.21% for 2021/22. As the additional income resulting from the tariff increases will be in line with HCHS inflation, it will simply maintain the real term value of current income.

5.3. This Rule amends **Regulation 2** of the principal Regulations, which makes provision for the calculation of health services charges using a simple set of tariffs. It provides for the following:

(i) the charge for ambulance services to increase from £224 to £225;
(ii) the charge for out-patient treatment to increase from £743 to £744;
(iii) the daily charge for in-patient treatment to increase from £913 to £915;
(iv) the maximum amount recoverable in any one case to increase from £54,566 to £54,682.

The amendments will apply to health services charges in respect of injuries occurring on or after 1 April 2021.

6. Consultation

6.1. It was not necessary to consult on the Rule. Support for the practice of increasing the level of charges was confirmed in the outcome of the Department's public consultation in 2006 on the draft Regulations governing the health services charges recovery scheme.

7. Equality Impact

7.1. In 2004, the Department considered the impact of the policy to extend the scheme on equality of opportunity as between those groups listed in section 75 of the Northern Ireland Act 1998. This screening identified no adverse or differential effects and a full impact assessment was not regarded as necessary. That position is regarded as still applying.

8. Regulatory Impact

8.1. A regulatory impact assessment was carried out in 2004 on the proposed extension of the scheme. It identified a limited effect on business and the voluntary sector in terms of a small increase (about 4%) in the cost of insurance cover in respect of employers' and public liability. A further assessment for this Rule is not considered necessary because the tariff levels are just being increased in line with Hospital and Community Health Services (HCHS) inflation.

9. Financial Implications

9.1. The increase in tariff levels will have a minimal financial impact, even when their full effect is realised by year ending 31 March 2022.

9.2. The bulk of the Health Services 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. Any impact on premiums due to this uplift is likely to be negligible. It has been calculated that an average motor insurance policy could be expected to rise by 0.003% or around 1.5p per policy.

9.3. In 2020/21, we reimburse CRU annually at an agreed level to administer the scheme on behalf of the Department. CRU is set to recover £6.8m for health services hospitals and the ambulance service in 2020/21. This is lower than recoveries made in earlier years, income levels have been impacted by the pandemic. £9m was recovered in 2019/20. 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.

10. Section 24 of the Northern Ireland Act 1998

10.1. Consideration has been given to the human rights implications of these regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

11. EU Implications

11.1. Not applicable.

12. Parity or Replicatory Measure

12.1. A similar scheme operates throughout GB. This measure is required to maintain parity with tariff levels there which are subject to the same increase from 1 April each year.

13. Additional Information

13.1. Not applicable.