

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (TRAVELLING EXPENSES AND REMISSION OF CHARGES) (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2008 (SSI 2008/390).

The above instrument was made in exercise of powers conferred by sections 75A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978. The instrument is subject to negative resolution procedure.

Policy Objectives

1. The purpose of these regulations is to amend the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No.2) Regulations 2003 (SSI 2003/460) (the “Principal Regulations”) which govern the operation of the NHS Low Income Scheme, to take into account the introduction of Employment and Support Allowance (ESA).

Policy background

2. The Principal Regulations provide that people receiving certain benefits are automatically entitled to free NHS services including prescriptions, dental treatment, wigs and fabric supports, full value of optical vouchers and payment of travel costs to hospital. That is, they are “passported” to such entitlement. The benefits which lead to such “passporting” include income support, income based jobseekers allowance and pension credit guarantee credit.

3. The Principal Regulations also provide a “safety net” - the NHS Low Income Scheme. Help from the scheme is income related and based on an assessment of a person’s ability to pay NHS charges in the light of their financial resources at the time a claim is made or a charge was paid. The calculation of entitlement is based broadly on Income Support arrangements, plus net housing costs and council tax where a person is personally liable to pay. Any resources a person receives may be taken into account in full, completely ignored (disregarded) or disregarded up to a certain amount, as set out in the Income Support Regulations. The Principal Regulations also allow for modification of the Income Support (General) Regulations 1987 in calculating entitlement for Low Income Scheme purposes.

4. Section 1 of The Welfare Reform Act 2007 introduces a new benefit, Employment and Support Allowance (ESA), for claimants having limited capacity to work. ESA replaces both Incapacity Benefit, which is based on National Insurance contributions and Income Support based on incapacity, which is income based. However, ESA has its own regulations which differ in detail from the income support regulations. These amendments therefore ensure that relevant ESA provisions may be used in the calculation of low Income scheme entitlement for people who have limited capacity for work and as such receive contributory ESA. Amendments have already been made to “passport” those who will receive the income related strand of ESA.

5. Regulation 3 of the amending Regulations modifies the Principal Regulations to provide that where a person is a member of a polygamous marriage, the resources and requirements of all members of that marriage should be taken into account as if they were those of the claimant.

6. Regulation 4 of the amending Regulations provides that where a reduction is applied under paragraph 63 of the Employment and Support Allowance Regulations 2008, any calculation of entitlement under the NHS Low Income Scheme should be as if the reduction was not applied. Also, this regulation provides for disregarding earnings where those earnings are from exempt work, as defined in paragraph 45 of the Employment and Support Allowance Regulations 2008. This regulation also provide for different amounts of premium to be included in any calculation to reflect the structure of ESA.

7. Regulation 5(a) of the amending Regulations provides that the calculation of the personal allowance for members of a polygamous marriage will consist of an amount for the claimant and one partner plus an amount in respect of each of the other partners calculated as the difference between the rate for a couple and a single person. Where the claimant and/or a partner is aged 60 or over this will be the rate appropriate to those aged 60 or over. Where the claimant and all partners are aged less than 60 this will be the rate appropriate to those aged less than 60.

8. Regulation 5(b) of the amending Regulations provides for amendments in relation to applicable amounts. It makes provisions in respect of the personal allowance of persons aged under 25 and in receipt of ESA, ensuring they are entitled to the rate applicable to persons aged 25 or over. Provisions are also made to achieve consistency in respect of those aged 60 or more. A previous amendment to the Principal Regulations provided that a claimant who is a member of a couple and both members of that couple are aged 60 or more do not qualify for a disability premium to be included in any calculation of entitlement to the NHS Low Income Scheme. These regulations extend this provision to include single people and lone parents, aged 60 or more. These regulations also provide that only those aged less than 60 qualify for an enhanced disability premium to be included in any calculation of entitlement to the NHS Low Income Scheme.

Consultation

9. There has been no consultation by the Scottish Government in respect of these Regulations. This is normal practice when regulations are introduced to take account of changes to the benefit regime. As noted above, the amendments are being made in response to changes by the Department of Work and Pensions to the benefit regime. The NHS Low Income Scheme is publicised in leaflet HCS2 – A Quick Guide to Help with Health Costs. Further information can be found at www.scotland.gov.uk/healthcosts

Consolidation

10. The Scottish Government is aware of the desirability of consolidating regulations when an instrument has been amended on a number of occasions. However, the time and resources required to consolidate an instrument has to be balanced against the other demands being made on the Directorate. Bearing those demands in mind, it has been decided not to consolidate these particular regulations at this time. Consideration is being given to carry out a consolidation in 2009.

Financial Effects

11. The majority of individuals previously eligible for full help with NHS charges and travelling expenses on low income grounds will remain eligible where they receive ESA. We expect the amendments to be cost neutral.

Scottish Government, Primary and Community Care Directorate
November 2008