

2015 No. 1776

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Exemptions from Charges,
Payments and Remission of Charges) (Amendment and
Transitional Provision) Regulations 2015**

<i>Made</i> - - - -	<i>1st October 2015</i>
<i>Laid before Parliament</i>	<i>15th October 2015</i>
<i>Coming into force</i> - -	<i>1st November 2015</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 115(1)(a), (2)(c) and (3)(b), 176(1) and (2)(d), 180(1), (2)(b), (3)(b), (4) and (5), 181, 182, 183(a), 184(1) and (2), 272(7) and (8) of the National Health Service Act 2006(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provision) Regulations 2015 and come into force on 1st November 2015.

(2) In these Regulations—

“NHS charge” has the meaning given in regulation 4(1) of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(b) (remissible NHS charges);

“NHS travel expenses” has the meaning given in regulation 3(1) of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(c) (NHS travel expenses);

“ophthalmic practitioner” has the meaning given in regulation 1(2) of the National Health Service (Optical Charges and Payments) Regulations 2013(d) (interpretation);

“sight test” is to be construed in accordance with section 36(2) of the Opticians Act 1989(e) (interpretation); and

“voucher” has the meaning given in regulation 1(2) of the National Health Service (Optical Charges and Payments) Regulations 2013.

(a) 2006 c.41. By virtue of section 271(1) of the 2006 Act, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England. Section 115(1) was amended by paragraph 54 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 176 was amended by paragraph 94 of Schedule 4 to the 2012 Act. Section 180 was amended by section 205 of, and paragraph 96 of Schedule 4 to, the 2012 Act. Section 183(a) was substituted by S.I. 2010/915 and was amended by paragraph 98(2) of Schedule 4 to, the 2012 Act. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations” that are relevant to the powers being exercised.

(b) S.I. 2003/2382. Regulation 4 was amended by S.I. 2006/562.

(c) Regulation 3 was amended by S.I. 2008/571 and 1700 and 2013/475.

(d) S.I. 2013/461.

(e) 1989 c.44.

Amendment to the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003

2.—(1) The National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 are amended in accordance with this regulation.

(2) In regulation 2(a) (interpretation), in the appropriate places insert—

““assessment period” means the assessment period for the purposes of universal credit as specified in regulation 21 of the Universal Credit Regulations 2013(b) (assessment periods);

“child element” means the child element of universal credit as specified in regulation 24(1) of the Universal Credit Regulations 2013 (the child element);

“earned income” means a person’s earned income as defined by Chapter 2 of Part 6 of the Universal Credit Regulations 2013(c) (calculation of capital and income – earned income);

“LCW element” means the LCW element of universal credit as defined by regulation 27(1)(a) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA elements);

“LCWRA element” means the LCWRA element of universal credit as defined by regulation 27(1)(b) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA element).”

(3) In regulation 5(d) (entitlement to full remission and payment)—

(a) in paragraph (1), for sub-paragraph (f)(e) substitute—

“(f) that person is a relevant universal credit recipient.”; and

(b) after paragraph (1), insert—

“(1A) For the purposes of paragraph (1)(f) “relevant universal credit recipient” means a person who is—

(a) receiving universal credit(f), either as a single person(g) or as a member of a couple(h), without—

(i) the child element,

(ii) the LCW element, or

(iii) the LCWRA element,

and either has no earned income or has earned income of £435.00 or less in the assessment period;

(b) receiving universal credit, either as a single person or as a member of a couple, where the universal credit award includes one or more of—

(i) the child element,

(ii) the LCW element, or

(iii) the LCWRA element,

(a) Regulation 2 was amended by S.I. 2004/663, 2005/26, 578 and 2114, 2006/562, 2008/571 and 1697, 2013/475 and 2015/570 and 643.

(b) S.I. 2013/376. Regulation 21 was amended by S.I. 2014/2887 and 2015/1362.

(c) Chapter 2 of Part 6 was amended by S.I. 2012/822, 2013/1508, 2014/2888 and 3255 and 2015/67, 478 and 345.

(d) Regulation 5 was amended by S.I. 2004/663 and 936, 2006/562, 2008/1697, 2009/411, 2013/475 and 1600, 2014/418 and 2667 and 2015/417.

(e) Sub-paragraph (1)(f) was substituted by S.I. 2014/2667 and amended by S.I. 2015/417.

(f) “Universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012 (c.5) (*see* regulation 2 of S.I. 2003/2382).

(g) “Single person” is to be construed in accordance with section 1(2)(a) of the Welfare Reform Act 2012 (universal credit) (*see* regulation 2 of S.I. 2003/2382).

(h) “Couple” has the meaning given in section 39 of the Welfare Reform Act 2012 (couples) (*see* regulation 2 of S.I. 2003/2382). Relevant amendments to section 39 were made by S.I. 2014/3229.

and either has no earned income or has earned income of £935.00 or less in the assessment period; or

- (c) a child or qualifying young person^(a) for whom a recipient referred to in sub-paragraph (b) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012^(b) (universal credit) and regulations made thereunder).”.

Amendment to the Primary Ophthalmic Services Regulations 2008

3. In regulation 3 of the Primary Ophthalmic Services Regulations 2008^(c) (sight tests – eligibility)—

- (a) in paragraph (2), for sub-paragraph (l)^(d) substitute—

“(1) that person is a relevant universal credit recipient.”;

- (b) after paragraph (2), insert—

“(2A) For the purposes of paragraph (2)(l) “relevant universal credit recipient” means a person who is—

- (a) receiving universal credit, either as a single person or as a member of a couple, without—

- (i) the child element,
- (ii) the LCW element, or
- (iii) the LCWRA element,

and either has no earned income or has earned income of £435.00 or less in the assessment period;

- (b) receiving universal credit, either as a single person or as a member of a couple, where the universal credit award includes one or more of—

- (i) the child element,
- (ii) the LCW element, or
- (iii) the LCWRA element,

and either has no earned income or has earned income of £935.00 or less in the assessment period; or

- (c) a qualifying young person for whom a recipient referred to in paragraph (b) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 (universal credit) and regulations made thereunder).”; and

- (c) in paragraph (4), for sub-paragraph (e)^(e) substitute—

“(e) in sub-paragraph (l)—

“assessment period” means the assessment period for the purposes of universal credit as specified in regulation 21 of the Universal Credit Regulations 2013^(f) (assessment periods);

“child element” means the child element of universal credit as specified in regulation 24(1) of the Universal Credit Regulations 2013 (the child element);

“couple” has the meaning given in section 39 of the Welfare Reform Act 2012^(g) (couples);

^(a) “Qualifying young person” has the meaning given in section 10(5) of the Welfare Reform Act 2012 (responsibility for children and young persons) (*see* regulation 2 of S.I. 2003/2382).

^(b) 2012 c.5.

^(c) S.I. 2008/1186. Regulation 3 was amended by S.I. 2008/2449, 2009/409, 2013/365 and 2555, 2014/418 and 2667 and 2015/417.

^(d) Paragraph (2)(l) was inserted by S.I. 2014/2667 and amended by S.I. 2015/417.

^(e) Paragraph (4)(e) was inserted by S.I. 2013/365.

^(f) S.I. 2013/376. Regulation 21 was amended by S.I. 2014/2887 and 2015/1362.

^(g) Section 39 was amended by S.I. 2014/3229.

“earned income” means a person’s earned income as defined by Chapter 2 of Part 6 of the Universal Credit Regulations 2013(a) (calculation of capital and income – earned income);

“LCW element” means the LCW element of universal credit as defined by regulation 27(1)(a) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA elements);

“LCWRA element” means the LCWRA element of universal credit as defined by regulation 27(1)(b) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA elements);

“qualifying young person” has the meaning given in section 10(5) of the Welfare Reform Act 2012(b) (responsibility for children and young persons);

“single person” is to be construed in accordance with section 1(2)(a) of the Welfare Reform Act 2012 (universal credit); and

“universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012 (universal credit).”.

Amendment to the National Health Service (Optical Charges and Payments) Regulations 2013

4. In regulation 8 of the National Health Service (Optical Charges and Payments) Regulations 2013(c) (eligibility for a voucher – supply of optical appliances)—

(a) in paragraph (3), for sub-paragraph (j) substitute—

“(j) that person is a “relevant universal credit recipient.”;

(b) after paragraph (3) insert—

“(3A) For the purposes of paragraph (3)(j) “relevant universal credit recipient” means a person who is—

(a) receiving universal credit, either as a single person or as a member of a couple, without—

(i) the child element,

(ii) the LCW element, or

(iii) the LCWRA element,

and either has no earned income or has earned income of £435.00 or less in the assessment period;

(b) receiving universal credit, either as a single person or as a member of a couple, where the universal credit award includes one or more of—

(i) the child element,

(ii) the LCW element, or

(iii) the LCWRA element,

and either has no earned income or has earned income of £935.00 or less in the assessment period; or

(c) a qualifying young person for whom a recipient referred to in sub-paragraph (b) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 (universal credit) and regulations made thereunder).”; and

(c) in paragraph (4), for sub-paragraph (e) substitute—

(a) S.I. 2013/461. Chapter 2 of Part 6 was amended by S.I. 2012/822, 2013/1508, 2014/2888 and 3255 and 2015/67, 478 and 345.

(b) In section 10(5), “qualifying young person” means a person of a prescribed description. The description of such a person is prescribed in regulation 5 of S.I. 2013/376.

(c) Regulation 8 has been amended by S.I. 2012/470, 2014/2667 and 2015/417 and 570.

“(e) sub-paragraph (j)—

“assessment period” means the assessment period for the purposes of universal credit as specified in regulation 21 of the Universal Credit Regulations 2013^(a) (assessment periods);

“child element” means the child element of universal credit as specified in regulation 24(1) of the Universal Credit Regulations 2013 (the child element);

“couple” has the meaning given in section 39 of the Welfare Reform Act 2012^(b) (couples);

“earned income” means a person’s earned income as defined by Chapter 2 of Part 6 of the Universal Credit Regulations 2013^(c) (calculation of capital and income – earned income);

“LCW element” means the LCW element of universal credit as defined by regulation 27(1)(a) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA elements);

“LCWRA element” means the LCWRA element of universal credit as defined by regulation 27(1)(b) of the Universal Credit Regulations 2013 (award to include LCW and LCWRA elements);

“qualifying young person” has the meaning given in section 10(5) of the Welfare Reform Act 2012^(d) (responsibility for children and young persons);

“single person” is to be construed in accordance with section 1(2)(a) of the Welfare Reform Act 2012 (universal credit); and

“universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012 (universal credit).”.

Transitional provision relating to the amendment of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003

5.—(1) This regulation applies where NHS travel expenses are incurred or an NHS charge is paid before 1st November 2015 and—

- (a) immediately before that date, a person was entitled to payment in full of NHS travel expenses or the full remission of an NHS charge by virtue of regulation 5 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (entitlement to full remission and payment); and
- (b) but for the application of this regulation, that person’s entitlement would cease by virtue of the amendments made to regulation 5 of those Regulations by regulation 2.

(2) Where this regulation applies, regulation 5 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 continues to have effect as if the amendment made by regulation 2 had not come into force.

Transitional provision relating to the amendment of the Primary Ophthalmic Services Regulations 2008

6.—(1) This regulation applies where, before 1st November 2015, a cost is incurred by a person in respect of a sight test by an ophthalmic practitioner without a voucher being completed, and—

- (a) immediately before that date, that person would have been entitled to have a sight test under primary ophthalmic services by virtue of paragraph (2)(1) of regulation 3 of the Primary Ophthalmic Services Regulations 2008 (sight test – eligibility); and

(a) S.I. 2013/376. Regulation 21 was amended by S.I. 2014/2887 and 2015/1362.

(b) Section 39 was amended by S.I. 2014/3229.

(c) Chapter 2 of Part 6 was amended by S.I. 2012/822, 2013/1508, 2014/2888 and 3255 and 2015/67, 478 and 345.

(d) In section 10(5), “qualifying young person” means a person of a prescribed description. The description of such a person is prescribed in regulation 5 of S.I. 2013/376.

(b) on or after that date, that person would no longer be so entitled by virtue of the amendments made to regulation 3 of those Regulations by regulation 3.

(2) Where this regulation applies, regulation 6 of the National Health Service (Optical Charges and Payments) Regulations 2013 (payments to a person in respect of sight tests) has effect in relation to that person's eligibility for a payment as if—

(a) the amendments made by regulation 3 had not come into force; and

(b) that person was an “eligible person” for the purposes of regulation 6(1) of those Regulations.

Transitional provision relating to the amendment of the National Health Service (Optical Charges and Payments) Regulations 2013

7.—(1) This paragraph applies where a cost is incurred by a person in respect of the supply, replacement or repair of an optical appliance^(a) before 1st November 2015 and—

(a) immediately before that date, that person was eligible for a payment by virtue of regulation 8 (eligibility for a voucher – supply of optical appliances) or 16 (eligibility for a voucher – replacement or repair) of the National Health Service (Optical Charges and Payments) Regulations 2013; and

(b) but for the application of paragraph (2), that person's entitlement would cease by virtue of the amendments made to regulation 8 of those Regulations by regulation 4.

(2) Where paragraph (1) applies, regulation 24 of the National Health Service (Optical Charges and Payments) Regulations 2013^(b) (payments to persons in respect of the supply, replacement or repair of optical appliances) continues to have effect in relation to that person's eligibility for a payment as if the amendment made by regulation 4 had not come into force.

(3) This paragraph applies where—

(a) before 1st November 2015, a person was issued with a voucher in accordance with regulation 9 (issue of vouchers by ophthalmic practitioners), 10 (issue of vouchers by NHS trusts) or 11 (issue of replacement vouchers) of the National Health Service (Optical Charges and Payments) Regulations 2013; and

(b) that voucher has not been accepted before that date.

(4) Where paragraph (3) applies such a voucher must be processed in accordance with the provisions of the National Health Service (Optical Charges and Payments) Regulations 2013 as if the amendments made by regulation 4 had not come into force.

Signed by authority of the Secretary of State for Health.

Jane Ellison
Parliamentary Under-Secretary of State,
Department of Health

1st October 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (“the 2003 Regulations”), the Primary Ophthalmic Services Regulations 2008 (“the 2008 Regulations”) and the National Health Service (Optical Charges and Payments) Regulations 2013 (“the 2013 Regulations”). They introduce thresholds for persons in

(a) “Optical appliance” is defined in section 179(5) of the National Health Service Act 2006.

(b) Regulation 24 was substituted by S.I. 2013/1856.

receipt of universal credit if they are to qualify for reimbursement of travel expenses and full payment of certain health related costs.

Regulation 5 of the 2003 Regulations makes provision for England to enable people in receipt of certain state benefits, or on low incomes, to be reimbursed for travel expenses incurred in obtaining certain NHS services and to be exempt from paying certain NHS charges, without needing to make a claim. This includes, until 31st October 2015, persons who are in receipt of universal credit and certain dependent children and young persons.

Regulation 2 of these Regulations amends regulation 5(1)(f) of, and the interpretation provision in, the 2003 Regulations so that, after 31st October 2015, a person receiving universal credit without a child element, a limited capability for work element or a limited capability for work and work-related activity element to their award is entitled to the payment in full of certain travel expenses relating to NHS treatment and the full remission of certain NHS charges if that person has no earned income or earned income of £435 or less in the relevant universal credit assessment period. A person (or a child or qualifying young person for whom the recipient is responsible) will also be entitled to such payment and remission if that person is in receipt of universal credit with any of the aforementioned elements to the award and has no earned income or earned income of £935 or less in the relevant universal credit assessment period. Earned income is exclusive of income tax, National Insurance contributions and pension contributions.

Regulation 3 of the 2008 Regulations makes provision for England about who is entitled to primary ophthalmic services sight tests under the National Health Service Act 2006. Regulation 8 of the 2013 Regulations provides for a scheme for England for payments to be made, by means of a voucher system, in respect of costs incurred by certain categories of person in connection with the supply of optical appliances. In both regulations, entitlement is conferred, until 31st October 2015, on persons who are in receipt of universal credit. Regulations 3 and 4 of these Regulations amend regulation 3 of the 2008 Regulations and regulation 8 of the 2013 Regulations respectively, so that, after 31st October 2015, the same earnings thresholds as in the 2003 Regulations will apply for those in receipt of universal credit.

Regulations 5 to 7 make transitional provision to ensure that persons whose entitlement to reimbursement of a travel expense, remission of a charge or payment of a cost arose before 1st November 2015, can obtain reimbursement, remission or payment after that date, notwithstanding the changes made by these Regulations.

An assessment of the impact of this instrument on the private sector and civil society organisations has been made. A copy of this impact assessment is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies may be obtained from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

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