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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 390**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Travelling  
Expenses and Remission of Charges) (Scotland)  
Amendment (No. 3) Regulations 2008**

<i>Made</i>	- - - -	<i>25th November 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th November 2008</i>
<i>Coming into force</i>	- -	<i>19th December 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 75A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No. 3) Regulations 2008 and come into force on 19th December 2008.

**Amendment of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003**

2. The National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003(2) are amended in accordance with regulations 3 to 5.

3. After regulation 8(5) (calculation of resources and requirements) insert—

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- (1) 1978 c. 29. Section 75A was inserted by the Social Security Act 1988 (c. 7), section 14(2), and amended by the Health and Medicines Act 1988 (c. 49), Schedule 2, paragraph 13, the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(13), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, Part I, paragraphs 32 and 50, the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 1, paragraph 1 and by S.I.1998/2385; section 105(7) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5, and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, Part I, paragraph 24, and the Health Act 1999 (c. 8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) S.S.I. 2003/460. Amended by S.S.I. 2004/102 and 166, 2005/3 and 179, 2006/142, 183 and 440, 2007/225, 259 and 391 and 2008/27, 147 and 288.

“(6) Where the claimant is a member of a polygamous marriage<sup>(3)</sup>, the resources and requirements of members of that marriage must be calculated in the same manner as those of the claimant and they must be taken into account as if they were the resources and requirements of the claimant, except that the applicable amount shall be calculated in accordance with regulation 18 of the Income Support Regulations<sup>(4)</sup>.”.

4. In Table A of the Schedule (modifications of the Income Support (General) Regulations 1987 for the purposes of Part I of this Schedule)–

(a) in column (2) of the entry relating to regulation 40 (calculation of income other than earnings), insert at the end–

“For paragraph (6) substitute the following paragraphs–

“(6) Where–

- (a) the claimant is a member of a couple or a polygamous marriage;
- (b) the claimant or the claimant’s partner (or either or any of them if the claimant has more than one partner) is receiving a contributory employment and support allowance; and
- (c) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations<sup>(5)</sup>,

that reduction shall not affect the amount of benefit that is to be taken into account.

(6A) Where–

- (a) the claimant is a single claimant or a lone parent;
- (b) the claimant is receiving a contributory employment and support allowance; and
- (b) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations,

that reduction shall not affect the amount of benefit that is to be taken into account.”.”; and

(b) in column (2) of the entry relating to Schedule 8 (sums to be disregarded in the calculation of earnings), after the second entry for paragraph 4 insert–

“After paragraph 4 insert–

“4A.—(1) Income is disregarded under this sub-paragraph where–

- (a) the claimant is undertaking work which falls within the categories in regulation 45(2) to (4) of the Employment and Support Allowance Regulations;
- (b) the partner of a claimant is in receipt of employment and support allowance and is undertaking work which falls within the categories in paragraphs (2) to (4) of regulation 45 of the Employment and Support Allowance Regulations but paragraph (c) is not applicable; or
- (c) both a claimant and the partner of the claimant are in receipt of employment and support allowance and both are undertaking work which falls within the categories in regulation 45(2) to (4) of the Employment and Support Allowance Regulations.

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(3) See the definition of “polygamous marriage” in regulation 2(1) of S.I. [1987/1967](#).

(4) S.I. [1987/1967](#); relevant amendments are made by S.I. [2008/1554](#).

(5) See the definition of “the Employment and Support Allowance Regulations” in regulation 2(1) of S.I. [1987/1967](#) as inserted by S.I. [2008/1554](#).

(2) Where sub-paragraph (1)(a) or (b) applies, income is disregarded to the same extent as it would be disregarded under paragraphs 5 and 6 of Schedule 7 to the Employment and Support Allowance Regulations.

(3) Where sub-paragraph (1)(c) applies, the aggregate income of the claimant and the partner is disregarded to the same extent as it would be disregarded under paragraphs 5 and 6 of that Schedule in the case of an individual.

(4) The other disregards in paragraphs 4 to 9 are not applicable where income is disregarded under this paragraph.

(5) In this paragraph “employment and support allowance” means an employment and support allowance under Part 1 of the Welfare Reform Act(6)

5. In Table B of the Schedule (modifications of the Income Support (General) Regulations 1987 for the purposes of Part II of this Schedule)–

(a) in column (2) of the entry relating to regulation 18 (polygamous marriages), after the first entry insert–

“For regulation 18(1)(a) and (b) substitute–

“(a) where each member of the marriage is aged less than 60–

(i) the amount applicable to the claimant plus the amount applicable to one of the other members of the marriage determined in accordance with sub paragraph (5) of paragraph 1 of Schedule 2; and

(ii) an amount equal to the difference between the amounts specified in sub-paragraphs (5) and (1) of paragraph 1 of that Schedule in respect of each of the members of the marriage who were not taken into account in determining the amount under (i) above;

(b) where any member of the marriage is aged 60 or more–

(i) the amount applicable to the claimant plus the amount applicable to one of the other members of the marriage determined in accordance with sub paragraph (6) of paragraph 1 of Schedule 2; and

(ii) an amount equal to the difference between the amounts specified in sub-paragraphs (6) and (2) of paragraph 1 of that Schedule in respect of each of the members of the marriage who were not taken into account in determining the amount under (i) above;”.”; and

(b) in column (2) of the entry relating to Schedule 2 (applicable amounts)–

(i) after the second entry insert–

“After paragraph 1 (personal allowances) insert–

“1ZA.—(1) A single claimant or lone parent aged less than 25 who–

(a) is entitled to an ESA component; or

(b) is incapable of work and has been incapable of work for a continuous period of not less than 28 weeks which begins no earlier than 27th October 2008,

has a personal allowance equal to the amount of the personal allowance which would apply if that person were not less than 25 years old.

(2) In sub-paragraph (1) “ESA component” means a support component or a work-related activity component within the meaning of section 4 of the Welfare Reform Act.”.”;

(ii) for the entry relating to paragraph 11(b) (disability premium), substitute–

“For paragraph 11(1) substitute–

“11.—(1) Subject to sub-paragraph (2), the condition is that–

- (a) where the claimant is a person aged less than 60 who is a single claimant or a lone parent, an additional condition specified in paragraph 12 is satisfied; or
- (b) where the claimant has a partner and both the claimant and the partner are aged less than 60, an additional condition specified in paragraph 11A(1) or 12 is satisfied by at least one of them; or
- (c) where the claimant is a person aged less than 60 who is a single claimant or a lone parent, an additional condition specified in paragraph 11A(2) is satisfied.”.

After paragraph 11 insert–

“11A.—(1) The additional conditions referred to in paragraph 11(1)(b) are–

- (a) the claimant is a member of a couple and a member of that couple has been awarded employment and support allowance which includes an ESA component; or
- (b) the claimant is a member of a couple and a member of that couple has been in receipt of employment and support allowance for 28 weeks, or is incapable of work and has been incapable of work for a continuous period of not less than 28 weeks which starts no earlier than 27th October 2008.

(2) The additional conditions referred to in paragraph 11(1)(c) are–

- (a) the claimant is a single claimant or lone parent who is in receipt of an employment and support allowance which includes a support component;
- (b) the claimant is a single claimant or lone parent who is in receipt of an employment and support allowance which includes a work-related activity component;
- (c) the claimant is a single claimant or lone parent who has been in receipt of employment and support allowance for a period of 28 weeks, or is incapable of work and has been incapable of work for a continuous period of not less than 28 weeks which starts no earlier than 27th October 2008;
- (d) the claimant is a–
  - (i) single claimant or lone parent;
  - (ii) severely disabled person within the meaning of paragraph 13(2)(a)(i); and
  - (iii) person who has been in receipt of employment and support allowance for a period of not less than 28 weeks, or is incapable of work and has been incapable of work for a

continuous period of not less than 28 weeks which starts no earlier than 27th October 2008.

(3) In this paragraph—

“employment and support allowance” means an employment and support allowance under Part 1 of the Welfare Reform Act;

“ESA component” means either a support component or a work-related activity component; and

“support component” and “work-related activity component” have the same meanings as in section 4 of that Act.”; and

(iii) after the entry relating to paragraph 13(2)(a)(ii) and (b)(iii) insert—

“For paragraph 13A(1) (enhanced disability premium)(7) substitute—

“**13A.**—(1) Subject to sub-paragraph (2), the conditions are that—

(a) the claimant is aged less than 60 and, where the claimant is a member of a couple, the claimant’s partner is aged less than 60; and

(b) the claimant or, as the case may be, the claimant’s partner is—

(i) in receipt of employment and support allowance which includes a support component; or

(ii) in receipt of the care component of disability living allowance at the highest rate prescribed under section 72(3) of the Contributions and Benefits Act or would be in receipt of that component at that rate but for either a suspension of benefit in accordance with regulations made under section 113(2) of that Act or an abatement as a consequence of hospitalisation.”.

After paragraph 13A(2) insert—

“(3) In this paragraph “employment and support allowance” means an employment and support allowance under Part 1 of the Welfare Reform Act and “support component” has the same meaning as in section 4 of that Act.”.

In paragraph 15(4)(a) (weekly amount of disability premium) for the entry in the left column substitute—

“(a) where the condition in paragraph 11(1)(a) is satisfied or the condition in paragraph 11(1)(c) and an additional condition in paragraph 11A(2) (b) or (c) are satisfied;”

After paragraph 15(4)(a) insert—

“(aa) where the condition in paragraph 11(1)(c) and an additional condition in paragraph 11A(2) (a) or (d) are satisfied;

(aa) an amount equal to the support component in paragraph 13 of Schedule 4 to the Employment and Support Allowance Regulations.”

In paragraph 15(4)(b) (weekly amount of premium) for the entry in the left column substitute—

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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“(b) where the condition in paragraph 11(1)(b) and an additional condition in paragraph 11A(1) or paragraph 12 are satisfied;””

St Andrew’s House,  
Edinburgh  
25th November 2008

*S ROBISON*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 to take into account the introduction of employment and support allowance. They make further modifications to the Income Support (General) Regulations 1987 for the purpose of calculating the income which is to be taken into account in the calculation of NHS travelling expenses and the remission of NHS charges.

Regulation 3 makes provision for the calculation of the resources and requirements of members of polygamous marriages.

Regulation 4 provides that where a person who is in receipt of employment and support allowance has a sanction applied under regulation 63 of the Employment and Support Allowance Regulations 2008, that person's entitlement to remission of NHS charges and the payment of NHS travelling expenses shall be calculated as if the sanction had not been applied. Regulation 4 also provides for specific disregards for those who undertake exempt work under regulation 45 of the Employment and Support Allowance Regulations 2008.

Regulation 5 provides for those aged under 25 to have included in the calculation of their entitlement to a remission of NHS charges and the payment of NHS travelling expenses a personal allowance of an amount equal to that for a person aged 25 or over. This will apply to those who are either in receipt of employment and support allowance and have been awarded an employment and support allowance component, or who have been incapable of work for a continuous period of 28 weeks since 27th October 2008. Regulation 5 also provides for various premiums to be included in the calculation for entitlement to remission of NHS charges and the payment of NHS travelling expenses, for those who receive Employment and Support Allowance.