

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (TRAVEL EXPENSES AND REMISSION OF
CHARGES) AMENDMENT (No.2) REGULATIONS 2008

2008 No. 2868

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

2. Description

These regulations amend the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, which govern the NHS Low Income Scheme, to reflect the introduction of Employment and Support Allowance (ESA).

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

3.1 None

4. Legislative Background

4.1 Section 1 of The Welfare Reform Act 2007 introduces a new benefit, Employment and Support Allowance (ESA), for claimants having limited capacity to work. The Low Income Scheme provides income related help with health costs with entitlement calculated broadly in accordance with income support regulations while ESA has its own regulations which differ in detail from the income support regulations. The amendments ensure that relevant ESA provisions may be used in the calculation of low Income scheme entitlement for people who have limited capacity for work.

4.2 These Regulations amend the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 in calculating entitlement to remission of charges of payment of travel expenses as below. They provide:

i) that entitlement in respect of a person who is in receipt of ESA where a sanction has been applied under the ESA Regulations, should be calculated as if there were no sanction applied;

ii) for disregards of earnings at the levels described in the ESA Regulations to be applied to a person in receipt of ESA or who has been continuously incapable of work for a continuing period of 28 weeks starting on or after 27 October 2008;

iii) that a person aged under 25 is entitled to the personal allowance rate applicable to a person aged 25 or more if he is in receipt of ESA with a component, or has been continuously incapable of work for a continuing period of 28 weeks starting on or after 27 October 2008;

iv) for entitlement to certain premiums to be based on receipt of ESA and that these may reflect the rate of components paid with ESA;

v) that entitlement to a disability premium, or an enhanced disability premium, relates only to people aged less than 60, all people not just those receiving ESA;

vi) that where a person is a member of a polygamous marriage resources and requirements of all members of that marriage should be taken into account as if they were those of the claimant;

vii) that requirements in the case of a polygamous marriage should include an amount for the claimant and one partner plus an amount for any other partners as the difference between the allowance for a couple and a single person.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, (The TERC Regulations) provide that people receiving certain benefits are automatically entitled to free prescriptions, dental treatment, wigs and fabric supports and sight tests, full value of optical vouchers and payment of travel costs to hospital. That is, they are “passport” to entitlement. These benefits include income support, income based jobseekers allowance or pension credit guarantee credit.

7.2 The TERC Regulations also provide a “safety net” - the National Health Service Low Income Scheme. Help from the scheme is income related and based on an assessment of a person’s ability to pay in the light of their financial resources at the time a claim is made or charge was paid. The calculation of entitlement is based 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 TERC Regulations also allow for modification of the Income Support (General) Regulations 1987 in calculating entitlement for Low Income Scheme purposes.

7.3 Section 1 of The Welfare Reform Act introduces a new benefit, Employment and Support Allowance (ESA), for claimants having limited capacity to work. ESA will replace both Incapacity Benefit, which is based on National Insurance contributions and Income Support based on incapacity, which is income based. Arrangements have been made to “passport” those who will receive the income related strand of ESA.

7.4 These amending Regulations modify the Income Support (General) Regulations 1987 in their application to the TERC Regulations to recognise the structure of contributory ESA. In particular, the provision where a sanction is applied under paragraph 63 of the Employment and Support Allowance Regulations 2008, any calculation of entitlement under the Low Income Scheme should be as if the sanction were not applied. There is a further provision for disregarding earnings where those earnings are from exempt work, as defined in paragraph 45 of the Employment and Support Allowance Regulations 2008. These amendments also provide for different amounts of premium to be included in any calculation to reflect the structure of ESA.

7.5 There are two amendments included in these regulations to achieve consistency in respect of those aged 60 or more. A previous amendment to the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 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 Low Income Scheme.

7.6 These regulations modify the Income Support (General) Regulations 1987, 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.

7.7 These regulations modify the Income Support (General) Regulations 1987, to provide for the calculation of the personal allowance for members of a polygamous marriage. These will consist of an amount for the claimant and one partner plus an amount in respect of each of the other partners 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 rates appropriate to those aged 60 or over. Where the claimant and all partners are aged less than 60 this will be the rates appropriate to those aged less than 60.

7.8 We do not normally consult on changes to the Low Income Scheme. The Low Income Scheme is publicised in leaflet HC11 Help with Health Costs.

8. Impact

8.1 There is no impact on business, charities or voluntary bodies.

8.2 There is minimal impact on the Prescription Pricing Division of the NHS Business Services Authority (that administers the National Health Service Low Income Scheme) while the new arrangements are assimilated. There is no impact on any other public sector body.

8.3 An full Impact Assessment has not been prepared for this instrument.

9. Contact

Gina Jones at the Department of Health Tel: 020 7972 2954 or e-mail: gina.jones@dh.gsi.gov.uk can answer any queries regarding the instrument.