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STATUTORY INSTRUMENTS

2016 No. 1045

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provisions) Regulations 2016

<i>Made</i>	- - - -	<i>1st November 2016</i>
<i>Laid before Parliament</i>		<i>3rd November 2016</i>
<i>Coming into force</i>	- -	<i>1st December 2016</i>

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

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 Provisions) Regulations 2016 and come into force on 1st December 2016.

(2) In these Regulations—

“the 2003 Regulations” means the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(2);

“the 2008 Regulations” means the Primary Ophthalmic Services Regulations 2008(3); and

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- (1) 2006 c.41. Section 176 of the National Health Service Act 2006 (“the Act”) was amended by paragraph 94 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 180 of the Act was amended by section 205 of, and paragraph 96 of Schedule 4 to, the 2012 Act. Section 183(a) of the Act was substituted by S.I. 2010/915 and was amended by paragraph 98(2) of Schedule 4 to the 2012 Act and by S.I. 2013/2269. See section 275(1) of the Act for the definitions of “prescribed” and “regulations” that are relevant to the powers being exercised. The powers conferred by these sections are exercisable by the Secretary of State only in relation to England, by virtue of section 271(1) of the Act.
- (2) S.I. 2003/2382; amended by S.I. 2004/663, 696 and 936, 2005/26, 578 and 2114, 2006/562, 675, 1065 and 2171, 2007/1898 and 2590, 2008/ 571, 1697, 1700 and 2868, 2009/411, 2010/620 and 1727, 2011/1587, 2012/1650, 2013/458, 475 and 1600 and 2015/570, 643 and 1776.
- (3) S.I. 2008/1186; amended by S.I. 2008/1700 and 2449, 2009/409, 2010/634, 2013/365, 2014/418, 2015/570 and 1776 and 2016/211.

“the 2013 Regulations” means the National Health Service (Optical Charges and Payments) Regulations 2013⁽⁴⁾.

Amendment to the 2003 Regulations

2.—(1) The 2003 Regulations are amended in accordance with this regulation.

(2) In regulation 2⁽⁵⁾ (interpretation)—

- (a) omit the definitions of “LCW element” and “LCWRA element”; and
- (b) in the definitions of “couple” and “single person”, omit the words from “except” to the end of each definition.

(3) In regulation 5⁽⁶⁾ (entitlement to full remission and payment), for paragraph (1A), substitute—

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

- (a) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the award did not include the child element,
 - (ii) the single claimant or, as the case may be, both joint claimants, did not have limited capability for work, and
 - (iii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £435.00 or less;
- (b) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the award included the child element, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less;
- (c) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the single claimant or, as the case may be, one or both joint claimants, had limited capability for work, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less; or
- (d) was a child or a qualifying young person for whom a person referred to in sub-paragraph (b) or (c) is responsible (within the meaning of Part 1 of the 2012 Act⁽⁷⁾ (universal credit) and regulations made thereunder).

(1B) Where paragraph (1C) applies, a person is to be treated as entitled to claim repayment of a NHS charge or NHS travel expenses under regulation 11.

(1C) This paragraph applies where the conditions specified in sub-paragraphs (a), (b), (c) or (d) of paragraph (1A) are satisfied in the assessment period⁽⁸⁾ in which the NHS charge or NHS travel expense is incurred and—

- (a) there is no relevant assessment period; or

(4) [S.I. 2013/461](#); amended by [S.I. 2013/1856](#), [2015/570](#) and [1776](#) and [2016/211](#) and [325](#).

(5) Regulation 2 was amended by [S.I. 2004/663](#), [2005/26](#), [2114](#), [2006/562](#), [2008/571](#) and [1697](#), [2013/475](#) and [2015/570](#), [643](#) and [1776](#).

(6) Regulation 5 was amended by [S.I. 2004/663](#) and [936](#), [2006/562](#), [2008/1697](#), [2009/411](#), [2013/475](#) and [2015/570](#), [643](#) and [1776](#).

(7) [2012 c.5](#). See regulation 4 of [S.I. 2013/376](#) for the meaning of responsibility for a child or qualifying young person.

(8) See regulation 2 of [S.I. 2003/2382](#) for the meaning of “assessment period”.

(b) none of those conditions were satisfied in the relevant assessment period.

(1D) For the purposes of paragraphs (1A) and (1C)—

“joint claimants” has the meaning given in section 40 of the 2012 Act (interpretation of Part 1);

“limited capability for work” means limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 respectively of the Universal Credit Regulations 2013 (limited capability for work; limited capability for work and work-related activity)(9);

“relevant assessment period” means the assessment period immediately preceding that in which the NHS charge was paid or NHS travel expenses incurred(10); and

“single claimant” has the meaning given in section 40 of the 2012 Act (interpretation of Part 1).”.

(4) In Schedule 1 (modifications of the Income Support (General) Regulations 1987)(11), in column 2 of Table A—

(a) in the modification of regulation 62(12) (calculation of grant income), in subparagraph (2C)(b)—

(i) for “regulations 41 to 44 of the Education (Student Support) (Wales) Regulations 2012” substitute “regulations 36 to 39 of the Education (Student Support) (Wales) Regulations 2015”(13); and

(ii) for “regulations 51 to 55” substitute “regulations 46 to 49”; and

(b) in the modification of regulation 66A(14) (treatment of student loans)—

(i) at the beginning of paragraph (1), for “A student loan” substitute “Subject to paragraph (1B), a student loan”; and

(ii) after paragraph (1A), insert—

“(1B) Where a student is a 2016 cohort student for the purposes of the Education (Student Support) Regulations 2011(15) and a loan is available to that student under Part 6 of those Regulations (loans for living costs), the amount to be disregarded as income (if greater than zero) is A-B, where—

(a) A is the amount of that loan, as calculated in accordance with regulation 71(1)(g) (general) of those Regulations; and

(b) B is the maximum amount of such a loan that is available to an equivalent 2012 cohort student under regulation 76 (2012 cohort students with full entitlements) of those Regulations, as calculated in accordance with regulation 71(1)(c) of those Regulations.”.

Amendment to the 2008 Regulations

3.—(1) The 2008 Regulations are amended in accordance with this regulation.

(9) Regulations 39 and 40 were amended by S.I. 2014/597.

(10) See regulations 3(1) and 4(1) of S.I. 2003/2382 for the meaning of “NHS travel expense” and “NHS charge”.

(11) S.I. 1987/1967 as amended.

(12) Regulation 62 is amended by S.I. 1988/663, 1992/2155, 1996/1944, 1999/1935, 2000/1444 and 1922, 2001/2319, 2002/1589, 2003/455, 2004/1708, 2005/574 and 1807, 2006/1752, 2007/1632, 2009/ 583 and 1575 and 2016/743.

(13) S.I. 2015/54; amended by S.I. 2015/1505 and 2016/77 and 211.

(14) Regulation 66A is amended by S.I. 1999/1935, 2000/1922, 2001/2319, 2002/1589, 2007/1632, 2008/2767, 2009/583, 1575 and 3152 and 2016/743.

(15) S.I. 2011/1986; amended by S.I. 2012/1653, 2013/235, 630, 1728 and 3106, 2014/1766, 2103 and 2765, 2015/1951 and 2016/211, 270 and 584.

(2) In regulation 3(16) (sight tests - eligibility)—

(a) for paragraph (2A), substitute—

“(2A) For the purposes of paragraph (2)(1) “relevant universal credit recipient” means a person who, in the relevant assessment period—

(a) had an award of universal credit, either as a single claimant or as one of joint claimants, where—

(i) the award did not include the child element,

(ii) the single claimant or, as the case may be, both joint claimants, did not have limited capability for work, and

(iii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £435.00 or less;

(b) had an award of universal credit, either as a single claimant or as one of joint claimants, where—

(i) the award included the child element, and

(ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less;

(c) had an award of universal credit, either as a single claimant or as one of joint claimants, where—

(i) the single claimant or, as the case may be, one or both joint claimants, had limited capability for work, and

(ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less; or

(d) was a qualifying young person for whom a recipient referred to in sub-paragraph (b) or (c) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 (17)(universal credit) and regulations made thereunder).

(2B) Where paragraph (2C) applies, a person is, for the purposes of regulation 5(1) (c), to be treated as falling within the description of a relevant universal credit recipient in paragraph (2)(1).

(2C) This paragraph applies where the conditions in sub-paragraphs (a), (b), (c) or (d) of paragraph (2A) are satisfied in the assessment period in which the sight test takes place and—

(a) there is no relevant assessment period; or

(b) none of those conditions were satisfied in the relevant assessment period.”;

(b) omit paragraph (4)(e); and

(c) after paragraph (4), insert—

“(5) For the purposes of paragraphs (2A) and (2C)—

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

(16) Regulation 3 was amended by S.I. 2008/2449, 2009/409, 2013/365, 2014/418, 2015/570, 643 and 1776 and 2016/211.

(17) 2012 c.5. See regulation 4 of S.I. 2013/376 for the meaning of responsibility for a child or qualifying young person.

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

“joint claimants” has the meaning given in section 40 of the Welfare Reform Act 2012 (interpretation of Part 1);

“limited capability for work” means limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 respectively of the Universal Credit Regulations 2013 (limited capability for work; limited capability for work and work-related activity);

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

“relevant assessment period” means the assessment period immediately preceding that in which the sight test takes place⁽¹⁸⁾;

“single claimant” has the meaning given in section 40 of the Welfare Reform Act 2012 (interpretation of Part 1); and

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

(3) In regulation 5 (sight test treated as a test under general ophthalmic services)⁽¹⁹⁾—

(a) for paragraph (1), substitute—

“(1) A person whose sight is tested by a contractor, but who was not an eligible person immediately before the testing and is shown—

- (a) during the testing to fall within the description specified in sub-paragraph (e) of regulation 3(1);
- (b) in accordance with paragraph (3), within 3 months after the testing to fall within any of the descriptions specified in regulation 3(2)(c) or (d); or
- (c) within three months after the testing to fall within the description specified in regulation 3(2)(l),

shall be taken for the purposes of the testing to have so fallen immediately before the person’s sight was tested.”; and

(b) in paragraph (4), after (1)(b), insert “or (c)”.

Amendment to the 2013 Regulations

4.—(1) The 2013 Regulations are amended in accordance with this regulation.

(2) In regulation 8⁽²⁰⁾ (eligibility for a voucher - supply of optical appliances)—

(a) for paragraph (3A), substitute—

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

- (a) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the award did not include the child element,
 - (ii) the single claimant or, as the case may be, both joint claimants, did not have limited capability for work, and

⁽¹⁸⁾ “Sight test” is to be construed in accordance with section 36(2) of the Opticians Act 1989 c.44.

⁽¹⁹⁾ Regulation 5 was amended by S.I. 2013/365.

⁽²⁰⁾ Regulation 8 was amended by S.I. 2012/470 and 2015/570 and 1776.

- (iii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £435.00 or less;
 - (b) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the award included the child element, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less;
 - (c) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
 - (i) the single claimant or, as the case may be, one or both joint claimants, had limited capability for work, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less; or
 - (d) was a qualifying young person for whom a recipient referred to in sub-paragraph (b) or (c) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 (universal credit) and regulations made thereunder).
- (3B) Where paragraph (3C) applies, a person is to be treated as a person of a description specified in paragraph (2) for the purposes of regulation 24 (payments in respect of optical appliances).
- (3C) This paragraph applies where the conditions in sub-paragraphs (a), (b), (c) or (d) of paragraph (3A) are satisfied in the assessment period in which the supply of the optical appliance is paid for and—
- (a) there is no relevant assessment period; or
 - (b) none of those conditions were satisfied in the relevant assessment period.”;
- (b) omit paragraph (4)(e); and
- (c) after paragraph (4), insert—
- “(4A) For the purposes of paragraphs (3A) and (3C)—
- “assessment period” means the assessment period for the purposes of universal credit as specified in regulation 21 of the Universal Credit Regulations 2013 (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 (calculation of capital and income - earned income);
- “joint claimant” has the meaning given in section 40 of the Welfare Reform Act 2012 (interpretation of Part 1);
- “limited capability for work” means limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 respectively of the Universal Credit Regulations 2013 (limited capability for work; limited capability for work and work-related activity);
- “qualifying young person” has the meaning given in section 10(5) of the Welfare Reform Act 2012 (responsibility for children and young persons);

“relevant assessment period” means the assessment period immediately preceding that in which the supply of the optical appliance is paid for (21);

“single claimant” has the meaning given in section 40 of the Welfare Reform Act 2012 (interpretation of Part 1); 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 2003 Regulations

5.—(1) This regulation applies where, during the period beginning on 1st November 2015 and ending on 30th November 2016—

- (a) a person incurred NHS travel expenses or paid a NHS charge;
- (b) that person was entitled to payment in full of NHS travel expenses or to the full remission of a NHS charge by virtue of regulation 5 of the 2003 Regulations (entitlement to full remission and payment); and
- (c) 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 11 of the 2003 Regulations continues to have effect in relation to that person’s eligibility for a repayment as if the amendments made by regulation 2 had not come into force.

Transitional provision relating to the amendment of the 2013 Regulations

6.—(1) This paragraph applies where, during the period beginning on 1st November 2015 and ending on 30th November 2016—

- (a) a cost is incurred by a person in respect of the supply, replacement or repair of an optical appliance;
- (b) 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 2013 Regulations; and
- (c) 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 2013 Regulations (22) (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 amendments made by regulation 4 had not come into force.

(3) This paragraph applies where—

- (a) during the period beginning on 1st November 2015 and ending on 30th November 2016, 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 2013 Regulations; and
- (b) that voucher has not been accepted during that period.

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

(21) See section 179(5) of the National Health Service Act 2006 (c.41) for the meaning given to “optical appliance”.

(22) S.I. 2013/461. Regulation 24 was substituted by S.I. 2013/1856.

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

Revocation

7. The National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provision) Regulations 2015(23) are revoked.

Signed by authority of the Secretary of State for Health.

1st November 2016

Prior
Parliamentary Under-Secretary of State,
Department of Health

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 revoke the National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provision) Regulations 2015 and substitute new criteria for determining the eligibility of persons who are in receipt of universal credit for the reimbursement of their travel expenses and assistance in respect of certain health related costs.

Regulation 5 of the 2003 Regulations makes provision 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. Since 1st November 2015, this has included people who are in receipt of universal credit with income below defined thresholds, and certain dependent children and young persons.

Regulation 2 of these Regulations replaces regulation 5(1A) of the 2003 Regulations with a revised definition of a “relevant universal credit recipient” and makes provision for the income thresholds to apply to the combined earnings of joint claimants to universal credit, for those assessed as having limited capability for work to be subject to the higher threshold, and in respect of the period by reference to which a person’s relevant income is calculated. It also ensures that those who pay a charge or travel expenses while their universal credit entitlement is being determined will be able to claim back the relevant costs if they are later shown to be entitled. Regulation 2(4) amends the 2003 Regulations to provide that in the case of a 2016 cohort student, for the purposes of the Education (Student Support) Regulations 2011, where a student loan is available to that student under those Regulations which exceeds the maximum amount of such a loan available to an equivalent 2012 cohort student, that excess amount is to be disregarded as income in a calculation for Help with Health Costs.

Regulation 3 of the 2008 Regulations makes provision 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 voucher to be issued to an eligible person which reduces the cost of the supply of an optical appliance. In both regulations, entitlement has been conferred, since 1st November 2015, on recipients of universal credit with income below defined thresholds, and certain dependent children and young persons. Regulations 3 and 4 of these Regulations amend regulation 3 of the 2008 Regulations and regulation 8 of the 2013 Regulations respectively, so that the same definition of “relevant universal credit recipient”, and equivalent refund provisions for universal credit recipients, as in the 2003 Regulations, will apply.

Regulations 5 and 6 make transitional provision to ensure that persons, whose entitlement to the reimbursement of a travel expense, remission of a charge or assistance with a cost arose between 1st November 2015 and 30th November 2016, can obtain reimbursement or repayment after that period, notwithstanding the changes made by these Regulations.

Regulation 7 revokes the National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional) Regulations 2015.

An impact assessment has not been prepared for this instrument as it is not considered that it will have any additional impact to that addressed in the impact assessment prepared when the use of thresholds to determine entitlement to Help with Health Costs was introduced in 2015.

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