

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (EXEMPTIONS FROM CHARGES, PAYMENTS AND REMISSION OF CHARGES) (AMENDMENT AND TRANSITIONAL PROVISIONS) REGULATIONS 2016

2016 No. 1045

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provisions) Regulations 2016 (“the Regulations”) amend –

(a) the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (“the 2003 Regulations”), which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to free NHS prescriptions, free NHS dental treatment, free wigs and fabric supports and assistance with the costs of travel to an NHS appointment on referral by a doctor, dentist or ophthalmic practitioner;

(b) the Primary Ophthalmic Services Regulations 2008 (“the 2008 Regulations”), which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to free NHS sight tests; and

(c) the National Health Service (Optical Charges and Payments) Regulations 2013 (“the 2013 Regulations”), which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to NHS optical vouchers, which provide help with the cost of glasses or contact lenses,

in respect of entitlements of Universal Credit recipients (“UC recipients”) to exemption from certain NHS charges, payments in respect of optical services and reimbursement of travel expenses (known as Help with Health Costs).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The National Health Service (Exemptions from Charges, Payments and Remission of Charges) (Amendment and Transitional Provision) Regulations 2015 (SI 2015/1776) (“the 2015 Regulations”) introduced earnings thresholds for determining the eligibility of UC recipients for Help with Health Costs. Following the coming into force of those Regulations, it became apparent that they did not provide for the earned income of joint claimants of Universal Credit to be taken into account when calculating whether income was within the prescribed thresholds for accessing Help

with Health Costs. The policy intention was that when considering whether a member of a couple receiving Universal Credit as joint claimants should be eligible for Help with Health Costs, the combined earned income of both joint claimants should be considered, and one of the amendments in the Regulations corrects this.

- 3.2 The Regulations also amend the criteria to reflect policy developments since the 2015 Regulations were made. However, in the interests of transparency, the Department has concluded that as the Regulations correct errors made in S.I. 2015/1776, they should be issued under the free issue procedure to all known recipients of that instrument (in accordance with Statutory Instrument Practice, paragraph 3.4.13). The Department has advised the SI Registrar, who agrees with the approach taken.
- 3.3 We will update the relevant guidance for both the public and those that administer Help with Health Costs, including pharmacists, dentists and other healthcare providers. We expect that only a very small number of people are likely to be affected by the change in treatment of earned income, as numbers on Universal Credit remain relatively low.

Other matters of interest to the House of Commons

- 3.4 As the Regulations are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2003, 2008 and 2013 Regulations were amended in 2015 by the 2015 Regulations to allow UC recipients, with earned income not exceeding specified thresholds, to be exempt from NHS charges, to claim travel costs when they receive NHS treatment on referral, and to receive free sight tests and optical vouchers. A commitment to review those Regulations was set out in the Explanatory Memorandum published with the 2015 Regulations. As a result of policy developments identified in undertaking this review, changes are required to the eligibility criteria for UC recipients introduced originally by the 2015 Regulations. The Regulations amend the three sets of Regulations mentioned above to implement those changes.
- 4.2 The 2008 Regulations provide that in specified circumstances a refund may be claimed for any fees paid for a sight test where it can be shown afterwards that at the time of the testing they were eligible for an NHS sight test. Currently, these Regulations do not provide for a UC recipient who, at the time of a sight test was unsure of their eligibility for a test and paid the fee, to claim a refund at a later date. The Regulations amend the 2008 Regulations to extend this entitlement to UC recipients. This is being done to bring the 2008 Regulations more into line with refund provisions in respect of sight test fees in the 2003 and 2013 Regulations.
- 4.3 Recently changes have been made to student funding arrangements in England, where students from lower income households will no longer receive grants, but will instead receive a higher amount of loan. The Regulations amend the 2003 Regulations to provide that where a student loan is available to a student who is a 2016 cohort student, for the purposes of the Education (Student Support) Regulations 2011, which exceeds the maximum amount of loan available to an equivalent 2012 cohort student under those Regulations, that excess amount of loan is not to be treated as income for the purpose of calculating entitlement to Help with Health Costs. This is to align the treatment of 2016 cohort students with students from previous cohorts in calculating

their entitlement to Help with Health Costs, where equivalent disregards are already in place in respect of certain grant income.

5. Extent and Territorial Application

- 5.1 This instrument extends to England.
- 5.2 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 Help with Health Costs provides help with certain NHS charges and certain other health costs, as set out in paragraph 2.1 to those on the lowest incomes, either where they are in receipt of a prescribed income-based benefit or through the NHS Low Income Scheme.
- 7.2 Help with Health Costs and Universal Credit - The current arrangements for Help with Health Costs for those who receive Universal Credit were introduced in November 2015. These arrangements use earned income thresholds to determine entitlement to Help with Health Costs, in order to target entitlement to those with the greatest need and the lowest incomes.
- 7.3 There are two earned income thresholds. The higher earnings threshold currently applies where a Universal Credit award includes a child element, and/or limited capability for work, or limited capability for work and work-related activity element. The lower earnings threshold applies to all other Universal Credit recipients.
- 7.4 These Regulations make four changes in relation to the Universal Credit arrangements.
- 7.5 Under current provision the earned income of an individual is taken into account in relation to the earnings threshold for entitlement to Help with Health Costs. However, in relation to Universal Credit, and other means-tested benefits, in the case of a couple it is the combined earnings of a couple which are used to assess entitlement to that benefit/credit, and this was the policy intention and the basis on which the impacts of the 2015 changes were modelled. The Regulations therefore set out that where a person is one of two joint claimants of Universal Credit, it is the combined earnings of the couple that are relevant to the arrangements for entitlement to Help with Health Costs.
- 7.6 An assessment period for Universal Credit entitlement runs for a calendar month from the date of a claim for Universal Credit and between the same dates each month after that. The amount of Universal Credit that a claimant is entitled to is adjusted to take account of any earnings received in the assessment period.
- 7.7 The Regulations define that the relevant assessment period to be used to determine entitlement to Help with Health Costs is the last complete assessment period before the charge is due or health cost is incurred. They also provide that a UC recipient can claim a refund if they incur a cost because there is no relevant assessment period

(because they had only just claimed Universal Credit or they did not qualify for Universal Credit in the last complete assessment period), or they did not satisfy the Help with Health Costs criteria in that assessment period (because they had earnings above the relevant threshold), but are subsequently able to show that they did meet the criteria for the period in which the cost was incurred. This is to take account of the fact that entitlement to Universal Credit will be assessed at the end of an assessment period.

- 7.8 The Regulations provide that the higher earnings threshold for Help with Health Costs applies to every person who has been assessed as having limited capability for work or limited capability for work and work related activity, and is therefore likely to have a disability, even if they do not receive the associated elements, for example because of the overlapping benefit rules. This ensures that those who have been determined as having limited capability for work will continue to have entitlement to Help with Health Costs as long as their earnings do not exceed the higher threshold once entitlement to the limited capability for work element is removed for new claims as outlined by the Department of Work and Pensions, which is planned for April 2017.
- 7.9 Refunds in respect of Sight Test Fees - Currently specified persons who have paid for a sight test, but afterwards are shown to have been eligible at the time for an NHS sight test, are entitled to a refund of that payment from NHS England. The Regulations amend the 2008 Regulations to extend this entitlement to UC recipients. Consideration is being given to extending this entitlement to other groups.
- 7.10 Transitional Provision - Transitional provision is made to protect the entitlement of UC recipients to reimbursement, remission or payment of NHS charges or relevant costs under the 2003 and 2013 Regulations from the impact of the changes made by these Regulations. This provision relates to UC recipients who would have been entitled to a refund of such a charge or a relevant cost between 1st November 2015 and 30th November 2016, but who have not claimed it before 1st December, when these Regulations come into force. Where such persons would lose their entitlement as a result of the changes introduced by these Regulations, the Regulations provide that they will continue to be able to claim a refund relating to that charge or expense as if the changes made by these Regulations had not been made.
- 7.11 NHS Low Income Scheme and calculation of entitlement for 2016 Cohort Students - Where a person is not in receipt of one of the prescribed low income benefits they may apply to the NHS Low Income Scheme, and their requirements and resources will be subject to the calculation of entitlement based on Income Support Regulations as modified by the 2003 Regulations. The NHS Low Income Scheme makes provision to disregard certain grants when a student's income and requirements are being assessed as part of an application to the scheme. This ensures that those from low income households who have been identified as being in need of this additional financial support are not, as a consequence, disadvantaged in their claim to the NHS Low Income Scheme.
- 7.12 Changes to student funding arrangements mean that support for students from low income households will now be in the form of higher levels of loans, rather than grants. The Regulations make provision for elements of some loans to be disregarded, specifically where a student loan is available to a student who is a 2016 cohort student for the purposes of the Education (Student Support) Regulations 2011, which exceeds the maximum amount of loan available to an equivalent 2012 cohort student, that excess amount of loan will be disregarded in a calculation for Help with Health Costs.

Consolidation

- 7.13 The 2013 Regulations were consolidating regulations and plans to consolidate the 2003 and the 2008 Regulations will be kept under review.

8. Consultation outcome

- 8.1 There was no consultation on this instrument. The Regulations make only minor changes to the current arrangements for Help with Health Costs for those in receipt of Universal Credit and in relation to refunds of payments for sight tests. They also make a technical amendment relating to student loans.

9. Guidance

- 9.1 Guidance previously issued to the public and to relevant healthcare professionals will be updated as necessary.

10. Impact

- 10.1 There is minimal impact on pharmacy, optical and dental businesses. Pharmacists, dentists and ophthalmic practitioners administer the existing arrangements for exemption from NHS charges or entitlement to free sight tests or to vouchers towards the cost of glasses or contact lenses, including asking for sight of, and interpreting, benefit award notices. To support these minor changes, information that was provided previously will be updated.
- 10.2 There is no negative impact on the public sector. Assistance with Help with Health Costs arrangements, including refunds of NHS charges or repayments of qualifying costs incurred is provided by NHS Trusts, NHS Clinical Commissioning Groups, the NHS Business Services Authority and NHS England. However, these arrangements form part of the business as usual work for these bodies and as such do not introduce any additional financial or administrative burden.
- 10.3 An Impact Assessment and equalities analysis have not been prepared for the Regulations. An Impact Assessment and equalities analysis, carried out in compliance with the public sector equality duty under s149 of the Equality Act 2010, on the use of thresholds to determine entitlement to Help with Health Costs for recipients of Universal Credit were prepared to support the introduction of that policy, as set out in SI 2015/1776 and are available from <http://www.legislation.gov.uk/ukxi/2015/1776/resources>¹. The Regulations do not change the impacts as modelled in those documents.
- 10.4 The Secretary of State's general duties under the NHS Act 2006 were also considered in that equalities analysis, and the Regulations do not change the impacts modelled in the document. The duties that have relevance are:
- The duty to have regard to the need to reduce inequalities with respect to the benefits that people can obtain from the health service.
 - The duty to have regard to the NHS Constitution, specifically in relation to the principle that access to services is based on clinical need, not on an individual's ability to pay.

¹ Printed copies of the Impact Assessment and equalities analysis are available from The Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

- 10.5 The provision for refunds for sight test fees for UC claimants corrects the legal standing of such refunds, aligning to provisions in the 2003 and 2013 Regulations. Operational arrangements are already in place to provide refunds, and this amendment makes no change to these arrangements. Similarly, the amendment to the NHS Low Income Scheme to introduce disregards for certain elements of loans for 2016 cohort students ensures that this student cohort is treated the same as previous cohorts, and consequently that 2016 cohort students from low income households are not disadvantaged. Therefore, in respect of these two amendments, there is not considered to be any negative impact in relation to the statutory duties.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. As the Regulations concern the provision of NHS primary care services in England on the basis of nationally determined terms of service, it is not possible to differentiate between contractors according to their operational turnover or size. This is to ensure the application of agreed nation-wide standards and practices in the provision of such services as part of the nationally determined contractual frameworks.
- 11.2 To minimise the impact of the requirements on small pharmacy, optical and dental businesses (employing up to 50 people), the approach taken will be to provide updated versions of the guidance provided previously, which will be distributed through the routine channels.

12. Monitoring & review

- 12.1 The Explanatory Memorandum for S.I. 2015/1776 set out that the arrangements provided for under those Regulations, in relation to Help with Health Costs for UC recipients, would be reviewed prior to April 2016. The amendments to the arrangements provided for under these Regulations arise from that review. The arrangements, including the amendments made by the Regulations, will be kept under review.

13. Contact

- 13.1 Gina Jones at the Department of Health Tel: 02079722954 (Gina.Jones@dh.gsi.gov.uk) can answer queries regarding this instrument.