SCOTTISH STATUTORY INSTRUMENTS

2003 No. 460

NATIONAL HEALTH SERVICE

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

Made - - - -	*26th September 2003*
Laid before the Scottish Parliament - - - -	*29th September 2003*
Coming into force - -	*6th October 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 75A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 and shall come into force on 6th October 2003.

Interpretation

2. In these Regulations, unless the context otherwise requires–

"the Act" means the National Health Service (Scotland) Act 1978;

"capital limit" in the case of–

(a) a person who lives permanently in accommodation provided by a care home service provider under section 2(3) of the Regulation of Care (Scotland) Act 2001(**2**), or in accommodation provided by a local authority under sections 21 to 24 and 26 of the

(**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 (Primary Care) Act 1997 (c. 46), Schedule 2, Part I, paragraphs 32 and 51, and the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(13), 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, and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24, and by 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**) 2001 asp 8.

National Assistance Act 1948(**3**), means the sum specified in regulation 20 of the National Assistance (Assessment of Resources) Regulations 1992(**4**); and

(b) any other person, means the amount prescribed for the purposes of section 134(1) of the Social Security Contribution and Benefits Act 1992(**5**);

"child tax credit" means child tax credit under section 1(1)(a) of the Tax Credits Act 2002(**6**);
"claimant" means a person who makes a claim for remission, payment or repayment in accordance with regulation 9 or 11;

"date of claim" means the date on which a claim made under regulation 9(1) or regulation 11(2) is received in an appropriate office or by the Secretary of State;

"disability element" means the disability element of working tax credit as specified in section 11(3) of the Tax Credits Act 2002;

"family" has the meaning assigned to it by section 137(1) of the Social Security Contributions and Benefits Act 1992(**7**) as it applies to income support, except that:

(a) in regulation 4(2)(j) and (l) it has the meaning assigned to it by section 35 of the Jobseekers Act 1995(**8**);

(b) in regulation 4(2)(n) it has the meaning assigned to it by regulation 2(2) of the Tax Credits (Definition and Calculation of Income) Regulations 2002(**9**); and

(c) where a claim has been made for support under Part VI of the Immigration and Asylum Act 1999(**10**), it means the asylum-seeker who has made that claim and any dependant, as defined in section 94 of that Act, whom the asylum-seeker has included in that claim and references to "family" in regulations 4(2)(i) and 10(1) and (2) shall be construed accordingly;

"full rate" means the rate determined under section 26(2) of the National Assistance Act 1948(**11**);

"income-based jobseeker's allowance" has the meaning assigned to it by section 1(4) of the Jobseekers Act 1995(**12**);

"income support" means income support under section 124 of the Social Security Contributions and Benefits Act 1992 and includes personal expenses addition, special transitional addition and transitional addition as defined in regulation 2(1) of the Income Support (Transitional) Regulations 1987(**13**);

"partner" means, where a claimant–

(a) is a member of a married or an unmarried couple, the other member of that couple; or

(b) is married polygamously to two or more members of the claimant's household, any such member;

"pension credit guarantee credit" means state pension credit guarantee credit under sections 1 and 2 of the State Pension Credit Act 2002(**14**);

(**3**) 1948 c. 29.
(**4**) S.I. 1992/2977; relevantly amended by S.S.I. 2001/138, regulation 3.
(**5**) 1992 c. 4.
(**6**) 2002 c. 21.
(**7**) 1992 c. 4.
(**8**) 1995 c. 18.
(**9**) S.I. 2002/2006.
(**10**) 1999 c. 33; section 94 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 9.
(**11**) 1948 c. 29; section 26(2) was amended by section 42(3) of, and paragraph 5(5) of Schedule 9 and Schedule 10 to, the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act").
(**12**) Section 1(4) was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 7, paragraph 2(4), and Schedule 13, Part V.
(**13**) S.I. 1987/1969
(**14**) 2002 c. 16.

"relevant charges" and "relevant travelling expenses" have the meanings prescribed by regulation 3(1);

"the relevant income" has the same meaning as in section 7(3) of Part 1 of the Tax Credits Act 2002(**15**);

"standard rate" means the standard rate fixed in accordance with section 22(2) of the National Assistance Act 1948(**16**);

"trade dispute" has the same meaning as in section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(**17**);

"week" means a period of 7 days beginning at midnight between Saturday and Sunday; and

"working tax credit" means working tax credit under section (1)(b) of the Tax Credits Act 2002.

Entitlement to full remission and payment

3.—(1) Any person of a description prescribed by regulation 4 is entitled, in accordance with the following provisions of these Regulations, to the remission of the whole amount of any charges specified in paragraph (2) which would otherwise be payable by that person ("relevant charges"), and to payment, in accordance with regulation 6 and 7, of the whole amount of the travelling expenses including, where applicable, the whole amount of the overnight accommodation expenses, referred to in paragraphs (3), (4) and (5) ("relevant travelling expenses").

(2) The specified charges for the purpose of paragraph (1) are–

(a) charges for drugs, medicines, appliances and pharmaceutical services payable in pursuance of section 69(1) of the Act(**18**); and

(b) charges for dental appliances and dental treatment payable in pursuance of section 70(1A)(**19**) or section 71(1)(**20**) of the Act(**21**) or of section 20(1) of the National Health Service (Primary Care) Act 1997(**22**).

(3) Paragraph (1) applies in the case of travelling expenses necessarily incurred or to be incurred by a person in attending a hospital for the purpose of availing that person of services provided under the care of a hospital consultant in pursuance of the Act, and includes the travelling expenses of a companion in a case where–

(a) that person is a child; or

(b) it is necessary on medical grounds for that person to be accompanied.

(4) Paragraph (1) applies in the case of overnight accommodation expenses necessarily incurred in obtaining such accommodation for the purpose of paragraph (3) by a person or a companion whose travelling expenses are payable by virtue of that paragraph.

(5) The travelling expenses, including as applicable overnight accommodation expenses, to be taken into account for the purposes of paragraphs (3) and (4) are to be the costs of travelling by the cheapest means of transport and of overnight accommodation in the cheapest facilities reasonably available.

(6) For the purposes of sub-paragraph (3) "child" means a person who has not attained the age of 16.

(**15**) See the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) for the manner of calculation of income under section 7(3).
(**16**) Section 22(2) was amended by section 44(3) of the 1990 Act.
(**17**) 1992 c. 52.
(**18**) For the applicable charges see S.S.I. 2001/430; amended by S.S.I. 2002/100 and 2003/130 and 295.
(**19**) Section 70(1A) was inserted by the Health and Medicines Act 1988 (c. 49) ("the 1988 Act"), section 11(4).
(**20**) Section 71(1) was amended by the 1988 Act, Schedule 3.
(**21**) For the applicable charges see S.I. 1988/464
(**22**) 1997 c. 46.

Description of persons entitled to full remission and payment

4.—(1) Regulation 3(1) applies–

(a) in the case of the charges in regulation 3(2)(b)–

(i) to any person who, either, at the time the arrangements for the treatment are made or at the time the relevant charges are made, is a person described in paragraph (2); and

(ii) as respects the course of treatment to which the relevant charges relate; and

(b) in any other case to any person described in paragraph (2) who, at the time when the relevant charges are made or when the relevant travelling expenses are incurred, is a person described in paragraph (2).

(2) The persons described are–

(a) a person who is in receipt of income support;

(b) a member of the same family as a person who is in receipt of income support;

(c) a person whose requirements equal or exceed that person's income resources and whose capital resources do not exceed the capital limit;

(d) a member of the same family as a person described in paragraph (2)(c) of this regulation;

(e) a person who is in receipt of an income-based jobseeker's allowance;

(f) a member of the same family as a person who is in receipt of an income-based jobseeker's allowance;

(g) a person who lives permanently in accommodation provided by a local authority under the Social Work (Scotland) Act 1968(**23**) and who has satisfied the authority that the person is unable to pay for that accommodation at the standard rate or, as the case may be, the full rate, and for the purposes of this paragraph a person lives permanently in that accommodation if it is the person's principal place of abode;

(h) an asylum-seeker for whom support is provided under Part VI of the Immigration and Asylum Act 1999;

(i) a member of the same family as a person described in paragraph (2)(h) of this regulation;

(j) a person who is a member of a family–

(i) one member of which, on the date entitlement is determined, is receiving–

(aa) working tax credit and child tax credit;

(bb) working tax credit which includes a disability element; or

(cc) child tax credit, but is not eligible for working tax credit; and

(ii) where the relevant income of the member or members to whom the tax credit is made under section 14 of the Tax Credits Act 2002 is determined at the time of the award not to exceed £14,200;

(k) a person who is in receipt of pension credit guarantee credit; or

(l) a member of the same family as a person who is in receipt of pension credit guarantee credit.

Persons entitled to remission in part or payment in part

5.—(1) A person who is not of a description prescribed by regulation 4 and whose capital resources do not exceed the capital limit is entitled, in accordance with the following provisions of these Regulations, to the remission of part of any relevant charges or, as the case may be, payment,

(**23**) 1968 c. 49.

in accordance with regulation 6, of part of any relevant travelling expenses if at the time when the relevant charges are made or when the relevant travelling expenses are incurred the person is–

(a) a person whose income resources exceed the person's requirements by less than a third of the relevant charges or, as the case may be, by less than the relevant travelling expenses; or

(b) a member of the same family as a person described in sub-paragraph (a) of this paragraph.

(2) This regulation applies only in respect of charges for wigs, fabric supports and surgical brassieres payable in pursuance of section 69(1) of the Act (supplied otherwise than under Part II of the Act), charges for dental appliances and dental treatment payable in pursuance of section 70(1A) or section 71(1) of the Act or of section 20(1) of the National Health Service (Primary Care) Act 1997, and any relevant travelling expenses.

(3) The amount of any relevant charges which a person is entitled by paragraph (1) to have remitted is the difference between the relevant charges and 3 times the amount by which the person's income resources exceed the person's requirements.

(4) The amount of the relevant charges for the purposes of paragraph (3) are in the case of–

(a) a charge under section 69(1) of the Act for the supply of an appliance, the charge made for that appliance;

(b) a charge–

(i) for dental treatment or for the supply of a dental appliance under Part II of the Act; or

(ii) for dental treatment under Part I of the National Health Service (Primary Care) Act 1997,

the charge made for one course of treatment, including any charge made for a dental appliance supplied in that course of treatment; or

(c) in the case of a charge for the supply of a dental appliance supplied otherwise than under Part II of the Act or under Part I of the National Health Service (Primary Care) Act 1997, the charge made for that appliance.

(5) Subject to regulation 7, the amount of the relevant travelling expenses which a person is entitled by paragraph (1) to be paid is the difference between the relevant travelling expenses incurred in any week and the amount by which the person's income resources exceed the person's requirements.

Payment of relevant travelling expenses

6. Where a payment falls to be made under regulations 3(1) or 5(1) in respect of relevant travelling expenses, that payment shall be made–

(a) in a case where the relevant travelling expenses are incurred or to be incurred by a person in attending a hospital which is vested in an NHS trust, by that NHS trust; or

(b) in any other case, by the Health Board.

Payment to persons resident in the Highlands and Islands

7.—(1) A person of the description prescribed in paragraph (3) who is not a person of a description prescribed by regulation 4 is entitled to payment of relevant travelling expenses incurred or to be incurred in making a journey between the person's normal place of residence in the Highlands and Islands and a hospital in the United Kingdom for the purpose of availing the person of services provided under the care of a hospital consultant in pursuance of the Act, provided that–

(a) the distance travelled from the person's home (or place of residence while working) to the hospital must be 30 miles or more, or involve a journey by sea of more than 5 miles; and