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

Made - - - -	*1st November 2016*
Laid before Parliament	*3rd November 2016*
Coming into force - -	*1st December 2016*

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

"the 2013 Regulations" means the National Health Service (Optical Charges and Payments) Regulations 2013(**4**).

(**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.

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

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

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

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

(**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".

"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 sub-paragraph (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.

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

(a) for paragraph (2A), substitute—

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

"(2A) For the purposes of paragraph (2)(l) "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)(l).

(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);

"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);

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

"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

(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;

(**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.