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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 59**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Payments and Remission of Charges) (Miscellaneous Amendments) (Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>1st March 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>3rd March 2017</i>
<i>Coming into force</i>	- -	<i>1st April 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 75A and 105(7), and paragraph 2A of schedule 11, of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Payments and Remission of Charges) (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 1st April 2017.

(2) In these Regulations—

“the 1998 Regulations” means the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998(2); and

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(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, paragraph 50 and by S.I. 1998/2385; S.S.I. 2010/283 and S.S.I. 2013/177. Section 105(7) was amended by the Health Services Act 1980 (c.53), schedule 6, paragraph 5 and schedule 7; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), schedule 9, Part I, paragraph 24; and by the Health Act 1999 (c.8), schedule 4 paragraph 60. Paragraph 2A of schedule 11 was inserted by the Health and Social Security Act 1984 (c.48), schedule 1, Part II, paragraph 7 and amended by the Health and Medicines Act 1988 (c.49), section 13(2) and (5) and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), section 13. 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) S.I. 1998/642; relevant amending instruments are S.I. 1999/748, S.S.I. 1999/64, S.S.I. 2003/218, S.S.I. 2003/431, S.S.I. 2004/97, S.S.I. 2004/168, S.S.I. 2005/119, S.S.I. 2006/138, S.S.I. 2008/289, S.S.I. 2009/288, S.S.I. 2011/55, S.S.I. 2013/137, S.S.I. 2015/86, S.S.I. 2015/333 and S.S.I. 2016/127.

“the 2003 Regulations” means the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003(3).

### **Amendment of the 1998 Regulations**

2.—(1) Regulation 8 of the 1998 Regulations (eligibility – supply of optical appliances) is amended as follows.

(2) For paragraph (3)(q) substitute—

“(q) in the relevant assessment period he—

(i) received universal credit, either as a single person or as a member of a couple, where he had earned income or, in the case of a couple, the couple had combined earned income, of £435.00 or less and—

(aa) the universal credit award did not include the child element; and

(bb) he or, in the case of a couple, both members of the couple, did not have limited capability for work;

(ii) received universal credit, either as a single person or as a member of a couple, where he had earned income or, in the case of a couple, the couple had combined earned income, of £935.00 or less and either, or both, of the following sub-paragraphs apply—

(aa) the universal credit award included the child element;

(bb) he or, in the case of a couple, either member or both members of the couple, had limited capability for work; or

(iii) was a qualifying young person for whom a recipient referred to in sub-paragraph (ii) was responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 and regulations made thereunder).”.

(3) In paragraph (4)(e)—

(a) for head (v) (definition of “LCW element”) substitute—

“(v) “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(4) respectively of the Universal Credit Regulations 2013 (limited capability for work; limited capability for work and work-related activity);”;

(b) omit head (vi) (definition of “LCWRA element”); and

(c) after head (vii) (definition of “qualifying young person”) insert—

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

(4) After paragraph (4) insert—

“(4A) In relation to paragraph (3)(q), where paragraph (4B) applies, a person is to be treated as a person of a description specified by regulation 8(2) for the purposes of regulation 20.

(4B) This paragraph applies where the conditions in heads (i), (ii) or (iii) of paragraph (3) (q) are satisfied in the assessment period in which the optical appliance is paid for and—

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(3) S.S.I. 2003/460; relevant amending instruments are S.S.I. 2004/102, S.S.I. 2004/166, S.S.I. 2005/3, S.S.I. 2005/179, S.S.I. 2007/259, S.S.I. 2008/27, S.S.I. 2008/288, S.S.I. 2009/124, S.S.I. 2011/55, S.S.I. 2011/211, S.S.I. 2013/137, S.S.I. 2013/142 and S.S.I. 2015/333.

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

- (a) there is no relevant assessment period; or
- (b) none of those conditions were satisfied in the relevant assessment period.”.

### **Amendment of the 2003 Regulations**

3.—(1) The 2003 Regulations are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definitions of “LCW element” and “LCRWA element”;
- (b) after the definition of “the Income Support Regulations” insert—

““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)”;

(c) after the definition of “qualifying young person” insert—

““relevant assessment period” means the assessment period immediately preceding that in which the relevant charge or relevant travel expense is incurred;”;

(d) in the definition of “single person”, for “(bza)” substitute “(bb)”.

(3) In regulation 4 (description of persons entitled to full remission and payment)—

(a) for paragraphs (2)(ba) to (2)(bb) substitute—

“(ba) a person who, in the relevant assessment period, was in receipt of universal credit, either as a single person or as a member of a couple, where—

- (i) the universal credit award did not include the child element;
- (ii) the single person or, in the case of a couple, both members of the couple, did not have limited capability for work,

and either the single person had earned income or, in the case of a couple, the couple had combined earned income, of £435.00 or less;

(bb) a person who, in the relevant assessment period, was in receipt of universal credit, either as a single person or as a member of a couple, where one or both of the following apply—

- (i) the universal credit award included the child element;
- (ii) the single person or, in the case of a couple, either member or both members of the couple, had limited capability for work,

and either the single person had earned income or, in the case of a couple, the couple had combined earned income, of £935.00 or less;

(bc) a child or a qualifying young person for whom a recipient referred to in sub-paragraph (bb) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012 and regulations made under that Part);”;

(b) after paragraph (2) insert—

“(3) In relation to sub-paragraphs (2)(ba) to (bc), where paragraph (4) applies, a person is entitled to repayment of the relevant charge or the relevant travel expense under regulation 11.

(4) This paragraph applies where the conditions in sub-paragraph (2)(ba), (bb) or (bc) are satisfied in the assessment period in which the relevant charge or relevant 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.”.
- (4) In Table A of the schedule—
- (a) in the modification of regulation 62 (calculation of grant income), in the inserted paragraph (2C)(b)(5)—
    - (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(6)”; and
    - (ii) for “regulations 51 to 55” substitute “regulations 46 to 49”; and
  - (b) in the modification of regulation 66A(7) (treatment of student loans and postgraduate master’s degree 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 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.”.

### **Saving provisions**

**4.—(1)** In a case to which paragraph (2) applies, regulation 12 of the 1998 Regulations continues to have effect as it had effect immediately before the amendments made by regulation 2 of these Regulations came into force.

- (2) This paragraph applies in a case where—
- (a) a person was issued with a voucher in accordance with regulation 9, 10 or 11 of the 1998 Regulations during the period beginning on 1st November 2015 and ending on 31st March 2017;
  - (b) that voucher has not been accepted before that date; and
  - (c) but for the application of this regulation, that person would cease to be eligible to present that voucher by virtue of the amendment made to regulation 8 of the 1998 Regulations by regulation 2 of these Regulations.

**5.—(1)** In a case to which paragraph (2) applies, regulation 20 of the 1998 Regulations continues to have effect as it had effect immediately before the amendments made by regulation 2 of these Regulations came into force.

- (2) This paragraph applies in a case where—

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(5) Paragraph (2C) was substituted by [S.S.I. 2010/319](#) and relevantly amended by [S.S.I. 2013/327](#).

(6) [S.I. 2015/54](#); amended by [S.I. 2015/1505](#), [S.I. 2016/77](#), [S.I. 2016/211](#), [S.I. 2017/47](#).

(7) Relevantly amended by [S.S.I. 2013/327](#).

- (a) a person was eligible to receive a payment under regulation 20 of the 1998 Regulations in respect of the supply, replacement or repair of an optical appliance which took place during the period beginning on 1st November 2015 and ending on 31st March 2017; and
- (b) but for the application of this regulation, that person would cease to be eligible to receive such a payment by virtue of the amendment made to regulation 8 of the 1998 Regulations by regulation 2 of these Regulations.

6.—(1) In a case to which paragraph (2) applies, regulation 11 of the 2003 Regulations continues to have effect as it had effect immediately before the amendments made by regulation 3 of these Regulations came into force.

(2) This paragraph applies in a case where—

- (a) a person had paid relevant travelling expenses or relevant charges during the period beginning on 1st November 2015 and ending on 31st March 2017 without exercising the person's right under regulation 3(1) of the 2003 Regulations;
- (b) the person was entitled to a repayment by virtue of regulation 11(1) of the 2003 Regulations (entitlement to full remission and payment); and
- (c) but for the application of this regulation, that entitlement would cease by virtue of the amendments made to regulation 4 of the 2003 Regulations by regulation 3 of these Regulations.

(3) In this regulation, “relevant charges” and “relevant travelling expenses” have the meanings given in regulation 3(1) of the 2003 Regulations.

St Andrew's House, Edinburgh  
1st March 2017

*SHONA ROBISON*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998 (“the 1998 Regulations”) and the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (“the 2003 Regulations”).

The 1998 Regulations provide for payments to be made by means of a voucher system in respect of costs incurred by certain categories of persons in connection with the supply, replacement and repair of optical appliances.

Regulation 8 of the 1998 Regulations makes provision for eligibility for payments to meet or contribute to the cost of the supply of optical appliances. Since 1st November 2015, this has included persons in receipt of universal credit with income below defined thresholds, and certain defined young persons. Regulation 2 of these Regulations amends regulation 8 of the 1998 Regulations so that (a) the combined income of couples is taken into account in assessing whether persons are within the relevant threshold, (b) the way that limited capability for work is defined is revised and (c) there is provision in respect of the period by reference to which a person’s income is calculated. Regulation 2 of these Regulations also makes provision so that those who pay for optical appliances while their universal credit entitlement is being determined will be able to claim back the cost (or a contribution towards it) if they are later shown to be entitled to universal credit.

The 2003 Regulations provide for the remission or repayment of the whole or part of certain health service charges, as well as payment of certain travelling expenses and costs of overnight accommodation. Similarly to the amendments described in the paragraph above in relation to the 1998 Regulations, regulation 3 of these Regulations amends regulation 4 of the 2003 Regulations in relation to universal credit.

The amendments described above that relate to the combined income of couples are being made as a result of a defect in the National Health Service (Payments and Remission of Charges) (Miscellaneous Amendments) (Scotland) Regulations 2015.

Regulation 3(4) of these Regulations amends Table A in the schedule to the 2003 Regulations to update references to student support legislation and to make provision about the way student loan income is to be taken into account in calculating a claimant’s resources.

Regulations 4 to 6 of these Regulations make saving provisions to extend the eligibility of certain persons who will no longer be eligible for assistance, or entitled to remission of charges or payment of expenses, because of the adjustments in relation to universal credit described above.