
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 376

The National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 2003

Citation and commencement

1. These Regulations may be cited as the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 2003 and shall come into force on 5th August 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(1), or in accommodation provided by a local authority under sections 21 to 24 and 26 of the National Assistance Act 1948(2), means the sum specified in regulation 20 of the National Assistance (Assessment of Resources) Regulations 1992(3); 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(4);

“child tax credit” means child tax credit under section 1(1)(a) of the Tax Credits Act 2002(5);

“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(6) 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(7);
- (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(8); and

(1) 2001 asp 8.
(2) 1948 c. 29.
(3) S.I.1992/2977; relevantly amended by S.S.I. 2001/138, regulation 3.
(4) 1992 c. 4.
(5) 2002 c. 21.
(6) 1992 c. 4.
(7) 1995 c. 18.
(8) S.I. 2002/2006.

- (c) where a claim has been made for support under Part VI of the Immigration and Asylum Act 1999⁽⁹⁾, 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;
- “full rate” means the rate determined under section 26(2) of the National Assistance Act 1948⁽¹⁰⁾;
- “income-based jobseeker’s allowance” has the meaning assigned to it by section 1(4) of the Jobseekers Act 1995⁽¹¹⁾;
- “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⁽¹²⁾;
- “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;
- “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⁽¹³⁾;
- “standard rate” means the standard rate fixed in accordance with section 22(2) of the National Assistance Act 1948⁽¹⁴⁾;
- “trade dispute” has the same meaning as in section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁵⁾;
- “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, 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⁽¹⁶⁾; and

⁽⁹⁾ 1999 c. 33; section 94 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 9.

⁽¹⁰⁾ 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”).

⁽¹¹⁾ 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.

⁽¹²⁾ S.I. 1987/1969

⁽¹³⁾ See the Tax Credit (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) for the manner of calculation of income under section 7(3).

⁽¹⁴⁾ Section 22(2) was amended by section 44(3) of the 1990 Act.

⁽¹⁵⁾ 1992 c. 52.

⁽¹⁶⁾ For the applicable charges see S.S.I. 2001/430; amended by S.S.I. 2002/100 and 2003/130 and 295.

(b) charges for dental appliances and dental treatment payable in pursuance of section 70(1A)(17) or section 71(1)(18) of the Act(19) or of section 20(1) of the National Health Service (Primary Care) Act 1997(20).

(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 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.

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 person whose entitlement to income support is less than 10 pence;
- (c) a member of the same family as a person who is in receipt of income support;
- (d) a member of the same family as a person whose entitlement to income support is less than 10 pence;
- (e) a person whose requirements equal or exceed his income resources and whose capital resources do not exceed the capital limit;
- (f) a member of the same family as a person described in paragraph (e) of this regulation;
- (g) a person who is in receipt of an income-based jobseeker's allowance;
- (h) a member of the same family as a person who is in receipt of an income-based jobseeker's allowance;
- (i) a person whose entitlement to an income-based jobseeker's allowance is less than 10 pence;
- (j) a member of the same family as a person whose entitlement to an income based jobseeker's allowance is less than 10 pence;

(17) Section 70(1A) was inserted by the Health and Medicines Act 1988 (c. 49) ("the 1988 Act"), section 11(4).

(18) Section 71(1) was amended by the 1988 Act, Schedule 3.

(19) For the applicable charges see S.I. 1988/464

(20) 1997 c. 46.

- (k) a person who lives permanently in accommodation provided by a local authority under the Social Work (Scotland) Act 1968(21) 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;
- (l) an asylum-seeker for whom support is provided under Part VI of the Immigration and Asylum Act 1999;
- (m) a member of the same family as a person described in paragraph (l) of this regulation; or
- (n) 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.

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, 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 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 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 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 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
- (b) the travelling expenses are more than £8, and the person makes a contribution of £8 towards the travelling expenses.

(2) The travelling expenses referred to in paragraph (1) include—

- (a) those of the return journey; and
- (b) those of a companion in a case where it is necessary on medical grounds that the person referred to in paragraph (1) should be accompanied.

(3) Paragraph (1) applies to a person who, at the time when the travelling expenses referred to in paragraph (1) are incurred, is normally resident or working on a long-term basis in the area comprising—

- (a) the local government areas of Highland, Western Isles, Orkney Islands and Shetland Islands;
- (b) that part of the local government area of Argyll and Bute which is the area of the former Argyll and Bute District Council and the islands of Arran, Great Cumbrae and Little Cumbrae; and
- (c) in the local government area of Moray, the areas of the former parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes.

(4) Where a payment falls to be made under paragraph (1) in respect of travelling expenses, that payment shall be made—

- (a) in a case where the 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.

Calculation of resources and requirements

8.—(1) Where it is necessary that the resources or requirements of a person, or the relationship between them, should be calculated for the purposes of these Regulations, they shall be calculated by the Scottish Ministers according to the provisions of this regulation and Schedule 1.

(2) For the purposes of paragraph (1), the resources and requirements of a person shall be calculated in the case of a claim made under—

- (a) regulation 9(1), by reference to the person’s resources or requirements at the date of claim; or
- (b) regulation 11(2), by reference to the person’s resources or requirements at the date when the relevant charges or relevant travelling expenses are paid in full,

and in each case in accordance with the provisions of these Regulations in force at that date.

(3) Unless any provision referred to in Schedule 1 specifies to the contrary, where a claimant is a member of a family—

- (a) the resources of the other members of the claimant’s family shall be calculated or estimated in the same manner as those of the claimant and shall be taken into account as if they were the claimant’s resources; and
- (b) in calculating the claimant’s requirements, the requirements of the other members of the claimant’s family shall be taken into account according to the provisions of Schedule 1.

(4) In a case to which paragraph (3) applies, unless the context otherwise requires, any reference to a “claimant” in Schedule 1 or in the provisions referred to in that Schedule shall be construed as including the other members of the claimant’s family.

(5) In a case where the earnings of any person are to be calculated for the purpose of this regulation and those earnings have been affected by a trade dispute, the earnings to be taken into account shall be the earnings which that person would have received if there had been no trade dispute.

Claims for remission or payment

9.—(1) Subject to paragraph (2), a person who falls within sub-paragraph (a) or (b) below and who wishes to claim their entitlement under regulations 3(1) or 5(1) shall, if the person comes—

- (a) within a description prescribed by regulation 4(2)(b), (d), (i) or (n), make a claim to the Scottish Ministers in writing; or
- (b) within a description prescribed by regulation 4(2)(e), (f) or (k), or 5(1), make a claim to the Scottish Ministers on a form provided by or on behalf of the Scottish Ministers for that purpose,

and shall send or deliver that claim in writing or, as the case may be, that form, to the Scottish Ministers or to an office receiving and processing such claims on their behalf.

(2) Subject to paragraph (3), where a person is unable for the time being to act, a claim may be made on that person’s behalf by another person.

(3) The Scottish Ministers may refuse to accept a claim made by one person on behalf of another where, in the Scottish Minister’s opinion—

- (a) the person on whose behalf the claim is made is able to act; or
- (b) the person making the claim is not a suitable person to act on behalf of that other person.

(4) A claimant shall produce in support of a claim such evidence as the Scottish Ministers may reasonably require.

(5) The Scottish Ministers may treat any claim under paragraph (1) as a claim to entitlement in respect of all the relevant charges and relevant travelling expenses and shall calculate the resources and requirements of the claimant according to the provisions of regulation 8 and Schedule 1.

(6) If the Scottish Ministers determine that the claimant and any member of the claimant's family are entitled to any remission of the relevant charges or any payment of the relevant travelling expenses, the Scottish Ministers shall issue a notice of entitlement to the claimant which shall be effective in respect of the claimant and any member of the claimant's family for the purposes of any remission of those charges, and any payment of those travelling expenses, to which they are entitled.

(7) A notice of entitlement issued under paragraph (6) shall indicate whether the claimant and any member of the claimant's family are entitled to full or partial remission or payment and, in the case of partial remission or payment, shall specify the amount of any relevant charges or relevant travelling expenses for which there is no entitlement to remission or payment.

(8) Subject to paragraphs (9) and (11), a notice of entitlement issued under paragraph (6) shall be effective for a period of 6 months from the date of claim and shall specify the dates of commencement and expiry of that period.

(9) Subject to paragraph (11), where a claimant or the claimant's partner is a person of a description specified in column (1) of Schedule 2 and the date of claim falls within any period specified in column (1), the notice of entitlement issued under paragraph (6) to that claimant shall be effective for the period specified in column (2) of that Schedule opposite the description in column (1) of that claimant or the claimant's partner.

(10) Subject to paragraph (11), any change in the financial or other circumstances of a claimant, or of any member of the claimant's family, during the period for which a notice of entitlement has been issued shall not affect the validity of the notice of entitlement in respect of that period or, in the case of partial remission or payment, the amounts referred to in paragraph (7).

(11) A claimant who is issued with a notice of entitlement in a case of partial remission may make a further claim in accordance with paragraph (1) at any time during the period for which the notice of entitlement has been issued, if the claimant considers that by reason of a change in the claimant's financial circumstances or those of any member of the claimant's family the amount referred to in paragraph (7) should be reduced.

Notices of entitlement

10.—(1) Where a person is entitled to full remission and payment because the person is a member of a family described in regulation 4(2)(n), the Scottish Ministers shall issue a notice of entitlement to that family.

(2) Such a notice of entitlement shall apply to—

- (a) any family member who is named on the notice of entitlement; and
- (b) all other members of such a person's family.

(3) A notice of entitlement issued under paragraph (1) shall be effective—

- (a) from such date; and
- (b) for such period,

as the Scottish Ministers may determine.

(4) Any change in the financial or other circumstances of a person who is a member of a family in respect of which a notice of entitlement has been issued under paragraph (1), during the period for which the notice of entitlement has been issued, shall not affect the validity of the notice of entitlement in respect of that period.

Repayment

11.—(1) Subject to the following provisions of these Regulations, a person of a description prescribed by regulations 4 or 5(1) who pays any relevant charges or relevant travelling expenses without exercising the person’s right under regulations 3(1) or 5(1) to remission or payment is entitled to be repaid whatever amount would otherwise have been remitted or paid.

(2) Subject to paragraph (3), it is a condition of the entitlement to repayment under paragraph (1) of a person of any description that the person makes a claim to the Scottish Ministers for repayment within three months after payment of the relevant charges or relevant travelling expenses (or within such further period as the Scottish Ministers may for good cause allow) and that the person makes that claim on a form provided by or on behalf of the Scottish Ministers for that purpose for persons of that description.

(3) Subject to paragraph (4), where a person is unable for the time being to act, a claim may be made on behalf of that person by another person.

(4) The Scottish Ministers may refuse to accept a claim made by one person on behalf of another where, in the Scottish Ministers' opinion—

- (a) the person on whose behalf the claim is made is able to act; or
- (b) the person making the claim is not a suitable person to act on behalf of that other person.

(5) It is a further condition of entitlement to repayment under paragraph (1) that the claimant produces in support of the claim such evidence as the Scottish Ministers may reasonably require.

(6) Where the Scottish Ministers are satisfied that a claimant is entitled to any repayment under paragraph (1) they shall—

- (a) in the case of a repayment to be made in respect of—
 - (i) a relevant charges made by an NHS trust or a Health Board, other than a charge for drugs or for appliances mentioned in sub-paragraphs (a), (c) or (d) of regulation 5(1) of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001⁽²²⁾; and
 - (ii) relevant travelling expenses incurred by a person in attending a hospital managed by an NHS trust or a Health Board,
 authorise in writing the repayment of the amount in question to the claimant by the NHS trust or the Health Board; or
- (b) in any other case, cause a repayment to be made to the claimant in such manner as appears to the Scottish Ministers to be appropriate in the circumstances of the particular case.

(7) On receipt of an authorisation given under paragraph (6)(a) the NHS trust or the Health Board shall pay the amount in question to the claimant.

Reimbursement of payments made in respect of relevant travelling expenses

12.—(1) Where a Health Board or an NHS trust (“the provider”) makes a payment under regulation 3(1) or 5(1), or a repayment under regulation 8(6)(b) or (7), in respect of relevant travelling expenses incurred or to be incurred by a person who is receiving services from the provider under the terms of an NHS contract the amount of the payment or repayment in question shall be reimbursed to the provider by the Health Board which has responsibility for the health care of that person.

(2) In this regulation the expression “Health Board which has responsibility for the health care of that person” has the meaning indicated by article 2 of the Functions of Health Boards (Scotland) Order 1991⁽²³⁾.

⁽²²⁾ S.S.I. 2001/430.

⁽²³⁾ S.I. 1991/570

Transitional provisions

13. Where, before the date of coming into force of these Regulations—
- (a) a person had claimed for the remission, in whole or in part, of any relevant charges or the payment, in whole or in part, of any relevant travelling expenses under the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988(24) (“the 1988 Regulations”) and the claim has not been determined, the claim shall be determined in accordance with the provisions of the 1988 Regulations as though they and the other instruments revoked by these Regulations, remained in force;
 - (b) a person was entitled to but had not made such a claim under the 1988 Regulations, that person may make a claim, and the claim shall be determined in accordance with the provisions of these Regulations provided that does not cause that person any financial detriment compared to the position he would have been in had his claim been determined in accordance with the provisions of the 1988 Regulations, and if it does cause such financial detriment his claim will be determined in accordance with the provisions of the 1988 Regulations as though they and the other instruments revoked by these Regulations, remained in force; and
 - (c) a person has been issued with any document which gives an entitlement to such a remission under the 1988 Regulations in respect of a period or course of treatment which period or course of treatment continues after that date, the document shall continue to be effective in respect such a remission or payment for the said period or course of treatment in accordance with the provisions of the 1988 Regulations as though they and the other instruments revoked by these Regulations, remained in force.

Revocations

14. The Regulations specified in Schedule 3 are revoked.

St Andrew’s House, Edinburgh
1st August 2003

MALCOLM CHISHOLM
A member of the Scottish Executive