

**EXPLANATORY MEMORANDUM TO  
THE NATIONAL HEALTH SERVICE (EXEMPTIONS FROM CHARGES,  
PAYMENTS AND REMISSION OF CHARGES) (AMENDMENT AND  
TRANSITIONAL PROVISION) REGULATIONS 2015**

**2015 No. 1776**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends regulations dealing with entitlement to exemption from NHS charges and reimbursement of travel expenses (known as Help with Health Costs) for those in receipt of Universal Credit. As an interim measure entitlement is currently given to all Universal Credit recipients.

2.2 However, as Universal Credit is rolled out to a wider group of claimants, it will be received by a greater number of people than are currently entitled to Help with Health Costs through the existing benefits system. In order to avoid the additional costs which would arise from providing entitlement to Help with Health Costs for all Universal Credit recipients, and to target entitlement to those most in need of support, this instrument introduces earnings thresholds which will restrict entitlement to Help with Health Costs to those who fall within the thresholds.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This instrument has been laid in breach of the 21 day rule because of cross government business planning concerns.

3.2 Provisions implementing the new earnings thresholds must be in force on 1 November 2015 because the Department for Work and Pensions has already put in place operational arrangements which are based on the thresholds being in force on 1 November 2015. As mentioned at paragraph 7.13 of this Memorandum, these arrangements include that award notices issued after 1 November 2015 set out the earnings threshold criteria for Help with Health Costs for Universal Credit recipients. In addition, the current provisions which confer entitlement to Help with Health Costs on recipients of Universal Credit will cease to have effect on 31 October 2015 (except for the purposes of entitlement that arises before that date).

**4. Legislative Context**

4.1 Three sets of regulations are amended by this instrument. In particular, the National Health Service (Travel Expenses and Remission of Charges) Regulations

2003 (“the 2003 Regulations”) provide that people in receipt of certain state benefits are entitled to:

- Free NHS prescriptions
- Free NHS dental treatment
- Free wigs and fabric supports
- Assistance with the costs of travel to an NHS appointment on referral by a doctor, dentist or optician.

4.2 The Primary Ophthalmic Services Regulations 2008 (“the 2008 Regulations”) provide that those in receipt of certain state benefits are entitled to free NHS sight tests.

4.3 The National Health Service (Optical Charges and Payments) Regulations 2013 (“the 2013 Regulations”) provide that those in receipt of certain state benefits are entitled to NHS optical vouchers.

4.4 These Regulations also currently allow for all people in receipt of Universal Credit to be exempt from NHS charges, to claim travel costs when they receive NHS treatment on referral, and to receive to free sight tests and optical vouchers.

4.5 These amendments are in relation to Universal Credit claimants. They introduce two earnings thresholds, so that Help with Health Costs will be limited to those Universal Credit recipients who have earnings within the threshold which applies to them. These thresholds will apply from 1 November 2015, subject to transitional provisions contained in the Regulations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- What is being done and why

7.1 From April 2013, temporary provisions have been in place to provide all Universal Credit recipients with exemption from NHS charges, entitlement to assistance to claim travel costs to receive NHS treatment on referral, and to free sight tests and optical vouchers – collectively known as Help with Health Costs.

7.2 Universal Credit will eventually replace those legacy benefits which the Department has historically used to provide entitlement (passporting) to Help with Health Costs. These are: Income Support; income-based Jobseekers Allowance; income-related Employment and Support Allowance; and child tax credit and/or working tax credit with a disability element, where income does not exceed £15,276.

However, as Universal Credit is rolled out, it will be received by a greater number of people than are on these legacy benefits, so continuing to provide entitlement to all Universal Credit recipients would lead to additional costs for the NHS.

7.3 There are several passported benefits affected by the introduction of Universal Credit, including for example, free school meals, legal aid and discounted heating tariffs. The Social Security Advisory Committee reviewed the potential impact of the introduction of Universal Credit on passported benefits. The report is available at the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214611/ssac-rev-of-pass-bens.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214611/ssac-rev-of-pass-bens.pdf)

7.4 Subsequent to the Government response, it was agreed across Government that, in order to prevent the additional costs which would arise from passporting all Universal Credit recipients, and to target entitlement to those most in need of support, earnings thresholds should be used to determine eligibility for passported benefits.

7.5 In putting in place thresholds, the Department's aim has been to align broadly with the arrangements for providing Help with Health Costs via the legacy benefits which Universal Credit will replace. To do this, two thresholds are being introduced. A lower threshold reflects broadly the arrangements for those who would qualify based on receipt of Income Support, income-based Jobseekers Allowance and income-related Employment and Support Allowance, and a higher threshold reflects broadly the arrangements for those who would qualify based on receipt of qualifying tax credits, namely those with children and/or a disability.

7.6 The level of thresholds has been determined by modelling the expected volumes of recipients of Universal Credit once it is fully rolled-out and has replaced the other legacy benefits. Because of the design of Universal Credit, it is not possible to directly map across the same people who would have qualified under the legacy benefits. There will be people who will gain entitlement under Universal Credit, in particular, those who currently receive housing benefit without one of the other legacy benefits (and who are therefore not entitled to Help with Health Costs). Conversely, there will be those who lose entitlement, such as those who currently qualify via tax credits and will lose out due to the capital limit in Universal Credit. In addition, there will be some people gaining and losing entitlement as a result of the level at which the thresholds are being set.

7.7 Modelling indicates that the combined effect of the structure of UC and the setting of earnings thresholds at the agreed levels, will lead to around 604,000 people gaining entitlement and 596,000 losing entitlement once Universal Credit is fully rolled-out, compared to the arrangements under the current legacy benefit system. This is set out fully in the Impact Assessment accompanying this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website. Thresholds will be kept under review, including to take account of changes to the legacy benefits system announced in the Budget of July 2015.

7.8 For those who lose entitlement, other help may still be available. The NHS Low Income Scheme is open to all, and can provide entitlement to Help with Health

Costs. Subject to a means-test, someone can get full or partial help. The details of this scheme are set out in regulations 5 and 6 of the 2003 Regulations and the similar provisions in the 2008 Regulations and the 2013 Regulations. Someone may also qualify for more specific exemptions, such as condition based exemptions (for example, diabetes) for prescriptions.

7.9 Given the likely impact, and the general interest around Universal Credit, this change is likely to be of interest to the public.

7.10 The earnings thresholds to be introduced from 1 November 2015 will be set as monthly figures, net of tax, National Insurance and pension contributions, in line with the way that the Universal Credit Regulations 2013 define earnings for Universal Credit assessments. Universal Credit is assessed and paid monthly, based on the date of claim of an individual. The Universal Credit assessment period runs for a calendar month from the effective date of claim and payment of Universal Credit is made within seven days of the end of the assessment period.

7.11 The lower threshold sets the entitlement for those getting Universal Credit who do not have a child or limited capability for work (or limited capability for work related activity) element included in their Universal Credit award, and is limited to those with no earnings or net earnings not exceeding £435 per month.

7.12 The higher threshold sets the entitlement for those getting Universal Credit who do have a child and/or limited capability for work (or limited capability for work related activity) element included in their Universal Credit award, and is limited to those with no earnings or net earnings not exceeding £935 per month.

7.13 For award notices issued from 1 November, a page will be included which sets out the earnings threshold criteria for the passported benefits (where applicable), including Help with Health Costs. For clarity and ease of reference, the net earnings figure pertinent to the Universal Credit assessment will be included at the beginning of this page.

7.14 Alongside the introduction of thresholds, transitional arrangements are being introduced in relation to refunds of charges. These ensure that someone who had entitlement before 1 November when a charge or expense arose, but who did not claim reimbursement, remission or payment before 1 November and who no longer has entitlement as a result of the changes introduced by these regulations, will still be able to claim entitlement relating to remission, reimbursement or payment for the period before 1 November.

- Consolidation

7.15 The Department intends to consolidate the 2003 Regulations in 2016/2017, dependent on available resources. The 2013 Regulations were consolidating regulations and plans to consolidate the 2008 Regulations will be kept under review.

## **8. Consultation outcome**

8.1 The Social Security Advisory Committee conducted a review into passported benefits and the impact of Universal Credit. This included a public consultation, which included responses from a range of organisations, including: Citizens Advice Bureau, Disability Benefits Consortium, College of Optometrists and the Optical Confederation and Pharmaceutical Service Negotiating Committee (a full list is included in the back of the Social Security Advisory Committee report). The consultation found firm support for health related benefits and the report included consideration of NHS charges and related health costs, and the use of varied approaches for determining entitlement, including earnings thresholds.

8.2 The Government response noted the Department of Health's agreement with the Social Security Advisory Committee on the need for a coherent approach across the range of passported benefits, support for the work incentive, and for information about entitlement to Help with Health Costs to be clear on the award notice. The Department also confirmed that it would explore income thresholds as an approach, and that it would have regard to: protecting those on low incomes, particularly families with children; maintaining a patient's ability to claim entitlement at the point of need; encouraging people to take up work; removing complexity; and creating no additional pressure on NHS budgets. The response is available at the following link: <https://www.gov.uk/government/publications/universal-credit-the-impact-on-passported-benefits>

8.3 The earnings thresholds that are being introduced are consistent with the approach considered by the Social Security Advisory Committee. The thresholds align broadly to the current arrangements, and ensure continued support for those on the lowest incomes and those with families and/or a disability, whilst also encouraging people into work. The award notice will include clear information about entitlement, and a patient's ability to claim entitlement at the point of need has been maintained. Work is underway to scope a system, with the initial focus being on prescriptions, to undertake electronic checks of entitlement at the point of access, which will help ensure that people will be aware of the current status of their entitlement.

8.4 Also in relation to consultation, in the earlier phases of Universal Credit development and preparation for the initial introductory phase, we informed the Pharmaceutical Services Negotiating Committee, the British Dental Association and the Optical Confederation of the developments, and gave them the opportunity to provide initial views. These groups represent practitioners who deal with patients at the point they claim entitlement. We have also had discussions with the Citizens Advice Bureau and the Prescription Charges Coalition.

## **9. Guidance**

9.1 NHS England and the optical profession will be advised of the introduction of the use of earnings thresholds to determine entitlement to NHS optical vouchers and NHS sight tests for those in receipt of Universal Credit by way of a letter through the Department of Health website.

9.2 NHS England, NHS dental contractors, pharmacists and other relevant health care professionals will be advised of the introduction of the use of earnings thresholds to determine entitlement to exemption from charges and reimbursement of travel costs for those in receipt of Universal Credit by way of NHS bulletins, the Drug Tariff and through the Department of Health website.

9.3 The public will be advised of the introduction of the use of earnings thresholds to determine entitlement to exemption from charges and reimbursement of travel costs and entitlement to NHS funded sight tests and to vouchers toward the cost of optical appliances for those in receipt of Universal Credit by way of the NHS Choices Website, patient information leaflets and waiting room notices. Citizens Advice will also be informed of these changes. Universal Credit recipients, with awards starting from 1 November 2015, will receive information with their Universal Credit award notice.

9.4 The Department for Work and Pensions will also be providing information to Universal Credit recipients, as well as advisors and members of the public, on provisions for “passport” benefits (that is benefits for which entitlement is determined by receipt of a DWP benefit, in this case Universal Credit) as part of publicity about Universal Credit.

## **10. Impact**

10.1 There is minimal impact on pharmacy, optical and dental businesses. Pharmacists, dentists and opticians administer the existing arrangements for exemption from NHS charges or entitlement to free sight tests, including asking for sight of, and interpreting, benefit award notices. The introduction of earnings thresholds for recipients of Universal Credit will require these businesses to note the change to the arrangements, and amend their checks accordingly. To support this change, information will be provided explaining the basis of the thresholds and where to find the relevant information on the award notice.

10.2 An assessment of the impact of this instrument on the private sector and civil society organisations has been made. A copy of this impact assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website. Copies may also be obtained from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

10.3 There is no negative impact on the public sector. Assistance with NHS travel costs for those who meet the criteria set out in the 2003 Regulations is provided by the NHS Business Services Authority, NHS Trusts or NHS Clinical Commissioning Groups. However, these arrangements form part of the business as usual work for these bodies and as such do not introduce any additional burden.

10.4 An Impact Assessment has been prepared for introduction of the use of earnings thresholds to determine entitlements to those in receipt of Universal Credit.

10.5 The attached equalities analysis has been carried out in compliance with the public sector equality duty under s.149 of the Equality Act 2010.

10.6 In considering the Secretary of State's general duties under the NHS Act 2006, the duties which are potentially impacted 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 promote a comprehensive health service, including the obligation that services provided as part of the health service in England are free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment.
- 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.

10.7 The impact in relation to inequalities is considered within the equalities analysis, and the obligation to provide by or under an enactment for any making and recovery of charges is complied with through these Regulations.

10.8 The potential impacts in relation to the principle that services are based on clinical need, not an individual's ability to pay are in line with those explored in the equalities analysis. The thresholds are set so that those with the lowest, or no, income, for whom having to pay health charges would be a more significant block to accessing services, retain entitlement to Help with Health Costs.

## **11. Regulating small business**

11.1 The Regulations apply to small businesses, including firms employing up to 20 people. As these 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 Assistance with NHS travel costs for those who meet the criteria set out in the 2003 Regulations is provided by the NHS Business Services Authority, NHS Trusts or NHS Clinical Commissioning Groups, and as such there is no impact as these are not considered to be small businesses.

## **12. Monitoring & review**

12.1 The arrangements provided in these Regulations for Universal Credit will be reviewed prior to April 2016.

## **13. Contact**

Gina Jones (Tel: 02079722954 [Gina.Jones@dh.gsi.gov.uk](mailto:Gina.Jones@dh.gsi.gov.uk)) can answer queries regarding this instrument.