EXECUTIVE NOTE

The National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No.2) Regulations 2008 SSI/2008/288

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 75A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978. The instrument is subject to negative resolution procedure.

Policy Objectives

1. The purpose of these Regulations is to amend the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No.2) Regulations 2003 (SSI 2003/460) ("the principal Regulations") to reflect forthcoming changes to the benefit regime. These Regulations also make minor drafting changes to correct errors in the principal Regulations as detailed below.

Income-Related Employment and Support Allowance (ESA)

2. The Welfare Reform Act 2007 comes into force on 27 October 2008. Section 1 of the Act introduces a new benefit, Employment and Support Allowance (ESA), for claimants having limited capacity to work. ESA replaces Incapacity Benefit (which is based on National Insurance contributions) and Income Support (which is income based) for new claimants. Over time, existing claimants will be migrated across to ESA to bring all claimants under the same system, helping to smooth administration and reduce complexity.

3. Currently claimants of Income Support (and members of that person's family) are entitled to full remission of NHS charges and full payment of NHS travelling expenses. These Regulations ensure that those receiving income related ESA (and members of that person's family) will receive the same entitlement to full remission and payment once the new benefit is introduced and ensure that no Scottish patient is disadvantaged by the introduction of ESA.

Definition of family

4. In addition to introducing a new definition of family for the purposes of ESA, the Regulations also take the opportunity to correct minor drafting errors in the definition of family in the principal Regulations which have had no practical implications. For ease and clarity for the reader the whole definition of family has been substituted instead of individual amendments.

Relevant Child

5. According to the current Regulations a relevant child, defined as a person who is supported by a local authority, does not need to make a claim to Scottish Ministers for remission/payment of NHS charges/travelling expenses. This was never the policy intention and in practice this category of persons has been making claims to Scottish Ministers in order to receive the entitlement. These Regulations correct the position

and bring them in line with current practice. This category has not been disadvantaged because they have always been entitled to full remission and payment.

6. Patients under the age of 16 (or aged 16 to 18 and in full-time education) are exempt from NHS charges on the basis of age. After that patients must make their own claim unless they fall into a category which does not require to do so in terms of the Regulations.

7. It is recognised that it would be overly bureaucratic to ask young people supported by a local authority to complete a full claim form since they have already been means tested by the local authority. So when making a claim they are provided with a short claim form which only requires a tick in the relevant box.

Consultation

8. There has been no consultation by the Scottish Government in respect of these Regulations. This is normal practice when regulations are introduced to take account of changes to the benefit regime. As noted above the amendments are being made in response to changes by the Department of Work and Pensions to the benefit regime. DWP launched a consultation in July called "No one written off: reforming welfare to reward responsibility" which closes on 22 October 2008.

Consolidation

9. The Scottish Government is aware of the desirability of consolidating regulations when an instrument has been amended on a number of occasions. However, the time and resources required to consolidate an instrument has to be balanced against the other demands being made on the Directorate. Bearing those demands in mind, it has been decided not to consolidate these particular regulations nor are there any plans to do so at this time.

Financial Effects

10. The majority of individuals previously eligible for full help with NHS charges and travelling expenses on low income grounds will now be eligible for help through ESA. However there are a small number of people who, prior to the introduction of ESA, would have been eligible as they were in receipt of Incapacity Benefit with an Income Support top up but will now no longer be automatically eligible. This group will need to apply for help through the Low Income Scheme. We expect this change to be cost neutral.

Scottish Government, Primary and Community Care Directorate
27 August 2008