

Explanatory Memorandum to The National Health Service (Welfare Reform Miscellaneous Amendments) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Ministers' Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The National Health Service (Welfare Reform Miscellaneous Amendments) (Wales) Regulations 2017

Vaughan Gething,
Cabinet Secretary for Health, Well-being and Sport

8 March 2017

1. Description

1.1 People who are currently entitled to out-of-work means-tested benefits or tax credits can also be eligible for a range of other support including free dental treatment, sight tests, help toward the costs of glasses, and reimbursement of travel costs to hospital while under the care of a consultant (known as Help with Health Costs).

1.2 Universal Credit, a non devolved matter led by the UK Department of Work and Pensions, is bringing changes to the benefits system. The roll-out of the Universal Credit programme is set to expand from April 2017 when entitlement to Universal Credit will increase the claimant base to include people not previously automatically eligible for free health costs e.g. people in low paid employment. As the scheme continues to expand the number of recipients will become much greater than those currently eligible to help with health costs through the current benefits system, presenting potential funding pressures for both the NHS and Welsh Government.

1.3 These Regulations introduce income thresholds for recipients of Universal Credit in determining eligibility to Help with Health Costs to help maintain a cost neutral position.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

3.1 These Regulations are being made in exercise of powers conferred by sections 71, 125, 128, 129 130, 131 and 203(9) and (10) of the National Health Service (Wales) Act 2006.

3.2 These Regulations are subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 These Regulations amend:

- the National Health Service (General Ophthalmic Services) Regulations 1986 (“the 1986 Regulations”), which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to free NHS sight tests;
- the National Health Service (Optical Charges and Payments) Regulations 1997 (“the 1997 Regulations”) which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to NHS optical vouchers, which provide help with the cost of optical appliances; and
- the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (“the 2007 Regulations”) which provide that people of prescribed descriptions, including those in receipt of certain state benefits, are entitled to certain free NHS prescriptions, free NHS dental treatment, and assistance with travelling expenses incurred in obtaining certain NHS services,

in respect of entitlements of Universal Credit recipients (“UC recipients”) to exemption from certain NHS charges, payments in respect of optical services and reimbursement of travel expenses (known as Help with Health Costs). These Regulations introduce two earned income thresholds for UC recipients if they are to qualify for Help with Health costs.

Policy objectives

4.1 A range of DWP working-age benefits are being replaced by payments known as Universal Credit. A phased implementation programme started to be rolled out across Great Britain from October 2013. Implementation is scheduled to be completed by 2021-22.

4.2 Until now, only claims for Job Seekers Allowance by a single person, have been accepted. Due to the gradual take up of Universal Credit and the relatively small numbers of recipients in Wales so far, it had been agreed that in the short-term Universal Credit should be included as a qualifying benefit for help with health costs for all recipients in Wales. However, this was only ever an interim measure and the need to ensure long term cost neutrality, and entitlement to free health costs for broadly the same number of people as the current system, remained. To ensure this, earnings thresholds to determine eligibility for recipients of Universal Credit for free health care are required.

4.3 The programme has been gradually expanded and all local authority areas in Wales are now accepting Universal Credit claims. The roll-out of Universal Credit is set to expand from April 2017 - significantly from July 2017 – increasing the claimant base to include people not previously automatically eligible for free health costs e.g. people in low paid employment. As such it is no longer possible to exempt all Universal Credit recipients and retain a cost neutral position. As the scheme continues to roll out the number of claimants will rise significantly and become much greater than those currently eligible to help with health costs through the current benefits system, presenting funding pressures for the NHS.

4.4 Help with Health Costs fulfil an important need and are essential to people on low incomes. They reduce the cost to other parts of the social welfare system and any reduction in support could have knock-on costs for individuals’ health. NHS dental and eye care is free for children, but other help with health costs benefits enable inclusion and supports good health.

4.5 In putting in place thresholds the 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.

4.6 The development of a coherent approach to Help with Health costs under Universal Credit aims to confirm entitlement to broadly the same number of people as the current

system. It also ensures support for those out of work on Universal Credit is not reduced in order to increase support for those in work on Universal Credit whilst maintaining cost neutrality.

4.7 In setting the level of thresholds, a range of factors has needed to be considered, including the move to household level payments under Universal Credit, the potential cost implications of the anticipated increase in take-up and the frequent adjustments to Universal Credit made under the real-time system.

4.8 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. A lower threshold of £435 net income per month for households, and a higher threshold of £935 net income per month for households with a dependent child and/or limited capability to work/disability.

4.9 This two threshold approach has been in place in England and Scotland since November 2015. We have also considered it prudent in terms of uniformity of approach and clarity for the public if we are able to adopt a GB-wide position in the approach to free health costs under Universal Credit.

4.10 This approach will ensure those most in need are targeted, and as now, the Low Income Scheme will provide additional support and back up for people not automatically exempt. (The Low Income Scheme is means-tested and open to anyone to apply for financial help with health costs).

4.11 Alongside the introduction of the thresholds, transitional arrangements are being introduced in relation to refunds of charges. These will ensure that someone who had entitlement before 1 April when a charge or expense arose, but who did not claim reimbursement, remission or payment before 1 April 2017 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 April 2017.

Implementation

4.12 It is intended that these Regulations will come into force on 1 April 2017.

5. Consultation

5.1 The introduction of Universal Credit by the UK Government brings further changes to the benefits system. Reform of the social security benefits system is not new and reasonably commonplace, and there have been numerous changes over the years. All of the changes have required amendments to legislation but none have been subject to consultation i.e. there is no precedent for consulting on changes to the linked help with health cost regulations. Neither Scotland nor England consulted on the changes to legislation to introduce the earnings thresholds for Universal Credit.

5.2 These Regulations do not alter existing policy as they allow for a cost neutral continuation of entitlement to broadly the same number of people as the current system. No consultation on the proposed changes to these Regulations has taken place. There

has not been consultation on an alternative approach to recognising a 'new' UK Government social security benefit in the past and it is not considered warranted on this occasion.

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment has not been prepared for these Regulations because they have no impact on business, charities or voluntary bodies.

7. Summary

7.1 As the rollout of Universal Credit continues to expand these Regulations will provide help with health costs to broadly the same number of people as the current system and that a cost neutral status is maintained for the NHS and Welsh Government.