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WELSH STATUTORY INSTRUMENTS

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**2003 No. 931 (W.121)**

**NATIONAL ASSISTANCE SERVICES, WALES**

**The National Assistance (Residential Accommodation)  
(Additional Payments, Relevant Contributions and  
Assessment of Resources)(Wales) Regulations 2003**

*Made* - - - - *26th March 2003*  
*Coming into force* - - *7th April 2003*

The National Assembly for Wales, in exercise of powers conferred by section 22(5) of the National Assistance Act 1948(1) and sections 54(1), 55(7) and 64(6) of the Health and Social Care Act 2001(2) hereby makes the following Regulations:—

**Citation, commencement, and application**

1.—(1) These Regulations may be cited as the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources)(Wales) Regulations 2003 and shall come into force on 7th April 2003.

(2) These Regulations apply to Wales only(3).

**Interpretation**

2. In these Regulations—

“the 2001 Act” (“*Deddf 2001*”) means the Health and Social Care Act 2001;

“the Act” (“*y Ddeddf*”) means the National Assistance Act 1948(4);

“the Assessment Regulations” (“*y Rheoliadau Asesu*”) means the National Assistance (Assessment of Resources) Regulations 1992(5);

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- (1) 1948 c. 29. Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions ) Order 1999 (S.I.1999/672), transfers all the functions of the Secretary of State under the 1948 Act, so far as they are exercisable in relation to Wales, to the National Assembly for Wales.
- (2) 2001 c. 15.
- (3) Although section 54 of the Health and Social Care Act 2001(“the 2001 Act”) extends to both Wales and England, these Regulations are made by the National Assembly for Wales which is the relevant authority empowered to make regulations for Wales only, *see* section 66 of the 2001 Act.
- (4) 1948 c. 29.
- (5) S.I. 1992/2977; S.I. 1992/2977 has been amended by S.I. 1993/964; S.I. 1993/2230; S.I. 1994/825; S.I. 1994/2386; S.I. 1995/858; S.I. 1995/3054; S.I. 1996/602; S.I. 1997/485; S.I. 1998/497; S.I. 1998/1730 in relation to England and Wales and by S.I. 2001/276(W.12); S.I. 2001/1409(W.95) and S.I. 2002/814(W.94) in relation to Wales.

“the Directions” (“*y Cyfarwyddiadau*”) means the National Assistance Act 1948 (Choice of Accommodation) Directions 1993<sup>(6)</sup>;

“lower capital limit” (“*terfyn cyfalaf isaf*”) means the lower of the two capital amounts specified in regulation 28 of the Assessment Regulations;

“preferred accommodation” (“*llety dewisol*”) means accommodation at the place of the resident’s choice within England and Wales as indicated by the resident, in accordance with paragraph 2 of the Directions;

“relevant preferred accommodation” (“*llety dewisol perthnasol*”) means preferred accommodation which meets the conditions in paragraph 3(a), (c) and (d) of the Directions, but where the cost of providing the resident with that preferred accommodation would require the local authority to pay more than that authority would usually expect to pay in order to provide Part 3 accommodation suitable for a person with the assessed needs of that resident;

“relevant resident” (“*preswlydd perthnasol*”) means a resident—

- (a) to whom paragraph 1A of Schedule 4 to the Assessment Regulations (capital to be disregarded in first twelve weeks) applies during the period of its application, or
- (b) who has entered into or who has agreed to enter into a deferred payment agreement with the local authority, as provided for in section 55 of the 2001 Act; and

“resident” (“*preswlydd*”) means a person whom the local authority have assessed under section 47 of the National Health Service and Community Care Act 1990<sup>(7)</sup> as needing accommodation pursuant to section 21 of the Act (whether or not that person has as yet actually taken up residence in such accommodation).

(2) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number; and
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

### **Additional Payments**

**3.—**(1) Regulation 4 applies if a resident has indicated that he or she wishes to be accommodated in relevant preferred accommodation.

(2) Regulation 4 does not apply to any arrangements made under paragraph 4 of the Directions prior to the coming into force of these Regulations.

**4.—**(1) A local authority must provide a resident with relevant preferred accommodation in the following circumstances;

- (a) if a third party agrees to make the additional payments<sup>(8)</sup>; or
- (b) in the case of a relevant resident, if the additional payments will be made by one or both of the following persons;
  - (i) a third party,
  - (ii) the resident himself or herself, from any resource or combination of resources specified in paragraph (2)

and each person can reasonably be expected to make those additional payments for the duration of the arrangements.

(2) The resources referred to in paragraph (1)(b)(ii) are—

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<sup>(6)</sup> The Directions dated 21 January 1993 were issued by the Welsh Office together with Welsh Office Circular 12/93

<sup>(7)</sup> 1990 c. 19.

<sup>(8)</sup> For “additional payments” see section 54(2) of the Health and Social Care Act 2001.

- (a) in the case of all relevant residents, any income or capital disregarded under Schedule 2, 3 or 4 to the Assessment Regulations except capital disregarded under paragraph 1A of Schedule 4; and
- (b) in the case of a resident who is a relevant resident by virtue of paragraph (a) of the definition of that term in regulation 2(1) (whether or not the person also comes within the definition in (b)), capital other than that included in Schedule 4 to the Assessment Regulations and including capital below the lower capital limit; and,
- (c) in the case of a resident who is a relevant resident by virtue of paragraph (b) of the definition, (whether or not the resident is also within the definition of paragraph (a)), any capital exceeding the lower capital limit, which may include the value of the resident's property which he occupies or formerly occupied as his only or main home, provided that if any additional payments are to be made from the value of that property they will form part of the relevant contributions under the deferred payments agreement.

### **Amendment of the Assessment Regulations**

5.—(1) After regulation 16 of the Assessment Regulations, insert the following regulation—

#### **“Additional Payments**

**16A.—**(1) An amount equivalent to any additional payments made or due to be made by a resident from resources specified in paragraph (2) shall be treated as part of the income of the resident.

(2) The resources specified for the purposes of paragraph (1) are the resources specified in regulation 4(2) of the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003<sup>(9)</sup> (additional payments from specified resources of relevant residents), except in a case falling within sub-paragraph (c) of that regulation where the additional payments are to be made from the value of the resident's property which he occupies or formerly occupied as his only or main home.”.

(2) After paragraph (3) of regulation 28 of the Assessment Regulations, insert the following paragraph—

“(4) For the purposes of paragraph (1), where a resident makes additional payments as provided for in regulation 4(2)(b) of the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003<sup>(9)</sup> (additional payments from capital below the lower capital limit) the resident is to be treated as possessing capital equivalent to any additional payments.”.

### **Relevant Contributions**

6.—(1) Paragraph (2) of this regulation applies in circumstances where a resident has a beneficial interest in a property which he or she occupies or formerly occupied as his or her main or only residence.

(2) For the purposes of section 55 of the 2001 Act, relevant contributions shall be that part of the payments that the resident is liable to pay to the local authority which is attributable to the value of the property referred to in paragraph (1) and that part shall be determined by calculating the difference between—

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<sup>(9)</sup> S.I. 2003/931 (W.121)  
<sup>(9)</sup> S.I. 2003/931 (W.121)

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) the payments that the resident is liable to pay to the local authority, calculated in accordance with the Assessment Regulations, and
- (b) the payments referred to in subparagraph (a) that the resident would be liable to pay if the value of the resident's interest in the property referred to in paragraph (1) was not taken into account.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(10)</sup>

26th March 2003

*D.Elis-Thomas*  
The Presiding Officer of the National Assembly

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<sup>(10)</sup> 1998 c. 38.

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## EXPLANATORY NOTE

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

These Regulations make provision in relation to residential accommodation provided under Part 3 of the National Assistance Act 1948 for expectant and nursing mothers, or persons aged 18 or over who by reason of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them.

Regulations 3 and 4 provide for additional payments to be made so that a person who has been assessed as needing such accommodation can choose to live in accommodation which is more expensive than the local authority would usually pay for someone with that person's assessed needs. The additional payments may be made by a third party, including a liable relative (as set out in section 42 of the National Assistance Act 1948). In certain circumstances, that is during the initial 12 week period when the value of the property is disregarded, or where there is a deferred payment agreement between the resident and the local authority, the resident may also contribute any or all of the additional payments. Such payments by a resident are to be made from resources specified in regulation 4(2). A person benefiting from the period of 12 weeks when the value of property is disregarded can, during that period, make additional payments from other capital including capital which falls below the lower capital limit. A person who has entered into or agreed to enter into a deferred payments agreement can make additional payments which can be set off against the charge on their property both during the 12 week period and thereafter.

Regulation 5 provides for consequential amendments to the National Assistance (Assessment of Resources) Regulations 1992 to enable additional payments made by a resident from any of the specified resources to be taken into account under the 1992 Regulations. It also makes a consequential amendment to the provision relating to tariff income in the 1992 Regulations, so that the additional payments are taken into account in the calculation of the resident's capital.

Regulation 6 sets out how relevant contributions are determined for the purposes of a deferred payment agreement under section 55 of the Health and Social Care Act 2001. Such agreements enable a resident to defer payment of assessed contributions towards the cost of his or her accommodation in return for the granting of a charge in favour of the local authority on his or her home.