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## EXPLANATORY NOTE

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

These Regulations make provision for additional payments to be made so that a person who is in receipt of or is eligible for residential 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.

Under these Regulations, where such a person requests more expensive accommodation, the local authority is required to provide that where additional payments are agreed to be made and no prejudice is caused to any obligation of the local authority to provide accommodation for any other person (regulation 2). Additional payments may be made where the person has requested accommodation which is not just personal or other care or nursing care, where the accommodation is available and, where it is to be secured, it will be secured on the local authority's usual terms and conditions for securing accommodation of that kind. The additional payments may be made by a third party. In certain circumstances, that is when the 12 week property disregard applies or where there is a deferred payment agreement between the resident and the local authority, or where the person is benefiting from the receipt of social care for which no charge is made by the local authority, the resident may contribute any or all of the additional payments, from specified parts of their resources (regulation 2(2) and (3)).

The part or parts of their resources from which a resident may make additional payments are set out in regulation 3. They are income or capital disregarded under Schedule 2, 3 and 4 to the National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977) ("the Assessment Regulations"), except capital disregarded under paragraph 1, 1A, 2, 3, 7 or 18 of Schedule 4 to those regulations (the person's home and certain capital related thereto) together with additional resources dependent upon certain factors. If they are a person to whom the 12 week property disregard applies, they may also use capital exceeding the amount first appearing in regulation 28 of the Assessment Regulations (currently £11,500). If they are a person who has or will have a deferred payment agreement including additional payments, they may also use the capital value of their home where that and other capital exceeds the capital limit set out in regulation 20 of the Assessment Regulations ("upper capital limit") (currently £18,500). If they are a person who benefits financially from not having to pay for personal or other care or nursing care, they may also use any capital above the upper capital limit and the difference between the amount that they would have had to pay to the local authority if that care was subject to a charge and the amount that they have to pay where no charge is made for that care.