

2002 No. 2531

NATIONAL ASSISTANCE SERVICES, ENGLAND

**The National Assistance (Assessment of Resources)
(Amendment) (No. 2) (England) Regulations 2002**

Made - - - - - 8th October 2002

Laid before Parliament 8th October 2002

Coming into force in accordance with regulation 1

The Secretary of State for Health, in exercise of the powers conferred upon him by section 22(5) of the National Assistance Act 1948(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) (Amendment) (No. 2) (England) Regulations 2002 and shall come into force—

- (a) for the purposes of this regulation and regulation 4, on 14th October 2002; and
- (b) for the purposes of regulations 2 and 3, on 28th October 2002.

(2) In these Regulations “the principal Regulations” means the National Assistance (Assessment of Resources) Regulations 1992(b).

(3) These Regulations apply to England only(c).

(a) 1948 c. 29; section 22(5) of the National Assistance Act 1948 was amended by section 39(1) of, and paragraph 6 of Schedule 6 to, the Ministry of Social Security Act 1966 (c. 20), by section 35(2) of, and paragraph 3(b) of Schedule 7 to, the Supplementary Benefits Act 1976 (c. 71), by section 20 of, and paragraph 2 of Schedule 4 to, the Social Security Act 1980 (c. 30), and by section 86 of, and paragraph 32 of Schedule 10 to, the Social Security Act 1986 (c. 50).

(b) S.I. 1992/2977; the relevant amending instrument is 1993/964.

(c) Although section 22(5) of the National Assistance Act 1948 (“the 1948 Act”) extends to both Wales and Scotland, the Secretary of State no longer has powers to make regulations under the said section in respect of either country. As respects Wales, *see* article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), which 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. As respects Scotland, the powers of the Secretary of State to make regulations under section 22(5) of the 1948 Act in respect of persons for whom accommodation is provided under Part 3 of the 1948 Act are applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968 (c. 49) (“the 1968 Act”) (as amended by paragraph 10(13) of Schedule 9 to the National Health Service and Community Care Act 1990 (c. 19)), to persons for whom accommodation is provided under either the 1968 Act or section 7 of the Mental Health (Scotland) Act 1984 (c. 36); *see* however section 53 of the Scotland Act 1998 (c. 46) (“the 1998 Act”), which provides that functions of a Minister of the Crown under an Act passed before the 1998 Act, in so far as they are exercisable within devolved competence, shall be exercisable by the Scottish Ministers instead of by the Minister of the Crown. The powers to make regulations under section 22(5) of the 1948 Act are within devolved competence for the purposes of section 53 of the 1998 Act.

Amendment of regulation 16 of the principal Regulations

2. After paragraph (4) of regulation 16 of the principal Regulations (capital treated as income) there shall be added the following paragraph—

“(5) Where an agreement or court order provides that payments shall be made to the resident in consequence of any personal injury to the resident and that such payments are to be made, wholly or partly, by way of periodical payments, any such periodical payments received by the resident, to the extent that they are not a payment of income, shall be treated as income.”

Amendment of Schedule 3 to the principal Regulations

3.—(1) In paragraph 10 of Schedule 3 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) in sub-paragraph (1), for the words “(charitable or voluntary payments) of any charitable payment or of any voluntary payment” there shall be substituted the words “(relevant payments) of any relevant payment”;
- (b) in sub-paragraph (2), for the words “charitable payment or voluntary payment” there shall be substituted the words “relevant payment”;
- (c) after sub-paragraph (2), there shall be added the following sub-paragraph—

“(3) In this paragraph, “relevant payment” means—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b)) from a trust whose funds are derived from a payment made in consequence of any personal injury to the resident;
- (d) a payment under an annuity purchased—
 - (i) pursuant to any agreement or court order to make payments to the resident; or
 - (ii) from funds derived from a payment made, in consequence of any personal injury to the resident; or
- (e) a payment (not falling within sub-paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury to the resident.”.

(2) In paragraph 30 of Schedule 3 to the principal Regulations—

- (a) for the words “charitable or voluntary payments” there shall be substituted the words “relevant payments”; and
- (b) at the end there shall be added the following sub-paragraph—

“(2) In this paragraph “relevant payment” has the same meaning as in paragraph 10(3).”

Amendment of Schedule 4 to the principal Regulations

4. In paragraph 6 of Schedule 4 to the principal Regulations (capital to be disregarded)—

- (a) after the words “(arrears of specified payments)” there shall be inserted the words “as in force immediately before the 14th October 2002”; and
- (b) for “, 9 or 9A” there shall be substituted “or 9”.

Signed by authority of the Secretary of State for Health

8th October 2002

Jacqui Smith
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the National Assistance (Assessment of Resources) Regulations 1992 (“the principal Regulations”). The principal Regulations concern the assessment of the ability of a person to pay for accommodation arranged by local authorities under Part 3 of the National Assistance Act 1948.

Regulation 2 allows all periodical payments received by virtue of any agreement or court order to make personal injury payments to the resident, to the extent that they are not a payment of income, to be treated as income.

Regulation 3 provides that payments of income received from all trusts whose funds derive from personal injury payments to a resident, from an annuity purchased with such funds and those received by virtue of any agreement or court order to make personal injury payments to the resident be disregarded in their entirety when intended and used for any item which was not taken into account when the standard rate was fixed for the accommodation provided. Otherwise £20 of all such income will be disregarded.

Regulation 4 maintains the current position regarding the treatment of arrears of various social security benefits in the financial assessment of a resident’s capital and removes a reference to a paragraph of the Income Support (General) Regulations 1987 which has been revoked.

These Regulations do not impose any charge on business.

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