

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES)
(AMENDMENT) (ENGLAND) REGULATIONS 2005

2005 No. 3277

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument amends the National Assistance (Assessment of Resources) Regulations 1992 (“the 1992 Regulations”). The 1992 Regulations relate to the assessment by a local authority of a person’s resources for the purposes of determining his ability to pay for accommodation that is provided, or proposed to be provided, to him under Part 3 of the National Assistance Act 1948 (c.29) (“the 1948 Act”). The 1992 Regulations are amended so as to: take account of the coming into force of the Civil Partnership Act 2004 (c.33) (“the 2004 Act”); update references in the income and capital disregards to take account of the commencement of the Adoption and Children Act 2002 (c.38) (“the 2002 Act”); and make provision for payments made under the Age-Related Payments Regulations 2005 (S.I. 2005/1983) (“the 2005 Regulations”) to be disregarded as capital.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument breaches the 21-day rule and must come into force, in part, on 5th December 2005. This instrument amends the 1992 Regulations to take account of the coming into force of the 2004 Act on 5th December 2005. If this instrument does not come into force by this date, there is a risk of claims of discrimination under Article 14 of the ECHR against the Department and local authorities, both by spouses and by civil partners.

The reason the instrument was not made and laid sooner was because initially it was not clear to the Department of Health whether amendments were required to the 1992 Regulations to take account of the coming into force of the 2004 Act. This was because of wider discussions that were taking place regarding contributions to be made to the cost of community care services, including the cost of accommodation provided under the 1948 Act, by liable relatives. When it became clear that amendments were required, the Department

took steps to have the necessary amending instrument drafted. Unfortunately, there was then a misunderstanding within the Department about the coming into force date of the 2004 Act which was thought to be 1st January 2006 rather than 5th December 2005.

4. Legislative Background

- 4.1 By virtue of section 22 of the 1948 Act, local authorities are obliged to apply the 1992 Regulations when assessing the ability of a person to pay for accommodation that is provided, or proposed to be provided, to him under Part 3 of that Act.

Amendments to the 1992 Regulations are normally made twice a year. On both occasions they take account of any changes in policy and any relevant legislative changes. This enables issues to be dealt with as a package rather than by preparing individual regulations.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 Not applicable.

7. Policy background

- 7.1 The 2004 Act which comes into force on 5th December 2005 enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Civil partners will be subject to many of the same legal rights and responsibilities as spouses. This instrument makes consequential amendments to the 1992 Regulations which arise from the policy of treating civil partners in the same or similar way as spouses.

- 7.2 Parts 2 and 3 of the 2005 Regulations make provision for a one-off payment of £200 to households with someone aged 65 or over, not in receipt of the guarantee element of Pension Credit, to help with council tax bills, and a one-off payment of £50 to households with someone aged 70 or over, in receipt of the guarantee element of Pension Credit, to help with living expenses. The intention of this instrument is to ensure such persons benefit from these payments by requiring local authorities in England to disregard them from capital when assessing the person's ability to pay for residential accommodation under Part 3 of the 1948 Act. Regulation 8 of the 2005 Regulations makes provision for disregarding payments under Parts 2 and 3 of the 2005 Regulations when considering a person's entitlement to social security benefits, and this instrument is in line with those Regulations..

7.3 The 2002 Act is to be fully commenced on 30 December 2005. Financial support for adopters is currently disregarded in the 1992 Regulations for the purposes of determining a person's ability to pay for accommodation under Part 3 of the 1948 Act. Those disregard provisions currently refer to transitional powers to make regulations – paragraph 3 of Schedule 4 to the 2002 Act, which was an interim measure pending full commencement of the 2002 Act. This instrument therefore amends the Schedules to the 1992 Regulations which deal with income and capital disregards to insert references to sections 2(6)(b) or 3 of the 2002 Act to ensure financial support for adopters continues to be disregarded from 30 December 2005.

8. Impact

8.1 Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is limited to local authorities in England exercising particular social services functions and is expected to be minor. The Department does not consider that this instrument will result in significant new burdens for local authorities.

9. Contact

9.1 Jerry Bird at the Department of Health Tel: 0113 254 6246 or e-mail: jerry.bird@dh.gsi.gov.uk can answer any queries regarding the instrument.