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STATUTORY INSTRUMENTS

1993 No. 964

NATIONAL ASSISTANCE SERVICES

The National Assistance (Assessment of Resources) (Amendment) Regulations 1993

<i>Made</i>	- - - -	<i>31st March 1993</i>
<i>Laid before Parliament</i>		<i>1st April 1993</i>
<i>Coming into force</i>	- -	<i>22nd April 1993</i>

In exercise of the powers conferred on me by section 22(5) of the National Assistance Act 1948⁽¹⁾ and of all other powers enabling me in that behalf, I hereby make the following Regulations—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) (Amendment) Regulations 1993 and shall come into force on 22nd April 1993.

(2) In these Regulations, unless the context otherwise requires, “the principal Regulations” means the National Assistance (Assessment of Resources) Regulations 1992⁽²⁾.

Amendment of regulation 2 of the principal Regulations

2. In paragraph (1) of regulation 2 of the principal Regulations (interpretation)—

(a) after the definition of “attendance allowance”, there shall be inserted:

““child support maintenance” shall be construed in accordance with section 3(6) of the Child Support Act 1991⁽³⁾”;

(b) for the definition of “the Independent Living Fund” there shall be substituted:

(1) 1948 c. 29; section 22(5) 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). As respects Scotland, section 22(5) of the 1948 Act is applied by section 87(3) of the Social Work (Scotland) Act 1968 (c. 49), as amended by paragraph 10(13) of Schedule 9 to the National Health Service and Community Care Act 1990 (c. 19), in respect of accommodation provided under either the 1968 Act or section 7 of the Mental Health (Scotland) Act 1984 (c. 36).

(2) S.I. 1992/2977.

(3) 1991 c. 48.

““the Independent Living Funds” has the same meaning as in the Income Support Regulations(4);”;

(c) before the definition of “invalidity pension” there shall be inserted:

““invalid care allowance” means an invalid care allowance under the Contributions and Benefits Act(5);”.

Amendment in relation to child support maintenance

3. After regulation 6 of the principal Regulations there shall be inserted the following regulation—

“Child support maintenance

6A.—(1) Except in circumstances where paragraph (2) applies, any payment of child support maintenance to a resident shall not be treated as part of a resident’s income or capital for the purposes of these Regulations.

(2) Where a resident is accompanied by a child and accommodation is provided for that child under Part III of the Act(6), any payment of child support maintenance made in respect of that child to the resident shall be treated as part of the income of the resident and Part IV of these Regulations (liable relatives) shall not apply to any such payment.”.

Amendments in relation to the calculations of income and capital

4.—(1) In each of the provisions to which paragraph (2) below refers, for the words “from the calculation of” there shall be substituted the words “in the calculation of”.

(2) Those provisions are regulations 11(3) (calculation of net profit of self-employed earners), 14(2) (calculation of net earnings of employed earners), 15(2) (calculation of income other than earnings), and 21(2) (calculation of capital) of the principal Regulations.

Amendments in relation to payments by third parties

5.—(1) After paragraph (3) of regulation 16 of the principal Regulations (capital treated as income) there shall be inserted the following paragraph—

“(4) Any payment of capital made or due to be made to a local authority by a third party pursuant to an agreement between the local authority and the third party in connection with the liability of the resident to pay the local authority for his accommodation shall be treated as part of the income of the resident, unless it is a voluntary payment made for the purpose of discharging any arrears of payments required by the local authority from the resident for his accommodation.”

(2) At the beginning of paragraph (4) of regulation 17 of the principal Regulations (notional income) there shall be inserted the words “Subject to paragraph (5);”.

(3) After paragraph (4) of regulation 17 of the principal Regulations there shall be inserted the following paragraph—

(4) See regulation 2(1) of the Income Support (General) Regulations 1987 (S.I. 1987/1967), and the relevant amending instruments which are S.I. 1988/999 and 1993/963.

(5) See section 70 of the Social Security Contributions and Benefits Act 1992 (c. 4).

(6) As respects England and Wales, see section 21(1)(aa) of the National Assistance Act 1948, inserted by section 42(1)(b) of the National Health Service and Community Care Act 1990; as respects Scotland, see section 22(7) of the 1948 Act, as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968.

“(5) A resident shall not be treated as possessing any voluntary payment of income made by a third party to a local authority for the purpose of discharging any arrears of the payments required by the local authority from the resident for his accommodation.”

(4) After paragraph (7) of regulation 22 of the principal Regulations (income treated as capital) there shall be inserted the following paragraph—

“(8) Any voluntary payment of income made by a third party to a resident for the purpose of helping the resident to discharge any arrears of the payments required by the local authority from the resident for his accommodation shall be treated as capital of the resident.”

(5) In regulation 25 of the principal Regulations (notional capital), paragraph (4) is omitted.

(6) In paragraph (5) of regulation 25, for the words “any of paragraphs (1), (2) or (4)” there shall be substituted the words “paragraph (1) or (2)”.

(7) In paragraph 8(3)(b) of Schedule 1 to the principal Regulations (transitional provisions), for the words “in regulation 25(4)” there shall be substituted the words “in regulation 16(4)”.

Amendment in relation to the Independent Living Funds

6. In paragraph (7) of regulation 22 of the principal Regulations (income treated as capital), for the words “the Independent Living Fund” there shall be substituted the words “the Independent Living Funds”.

Amendment in relation to capital jointly held

7. In paragraph (2) of regulation 27 of the principal Regulations (capital jointly held), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) the resident’s share shall be valued at an amount equal to the price which his interest in possession would realise if it were sold to a willing buyer (taking into account the likely effect on that price of any incumbrance secured on the whole beneficial interest), less 10 per cent and the amount of any incumbrance secured solely on the resident’s share of the whole beneficial interest; and”.

Amendment of Schedule 2 to the principal Regulations

8.—(1) In paragraph 1 of Schedule 2 to the principal Regulations (sums to be disregarded in the calculation of earnings), for the words “or interrupted” there shall be substituted the words “or is interrupted”.

(2) In paragraph 3(2)(a) of Schedule 2 to the principal Regulations, after the words “by way of” there shall be inserted the words “a carer premium or a”.

(3) In paragraph 3(2)(b)(i) of Schedule 2 to the principal Regulations, after the words “an invalidity pension,” there shall be added the words “an invalid care allowance”.

Amendment of Schedule 4 to the principal Regulations

9. In Schedule 4 to the principal Regulations, for paragraph 2 there shall be substituted the following paragraph—

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

“2.—(1) Subject to sub-paragraph (2), the value of any premises which would be disregarded under paragraph 2 or 4 of Schedule 10 to the Income Support Regulations(7) (premises acquired for occupation, and premises occupied by a partner, a former partner or a relative).

(2) For the purposes of sub-paragraph (1), paragraph 4 of Schedule 10 to the Income Support Regulations shall apply as if for the words “that person is aged 60 or over or is incapacitated” there were substituted the words “that partner or relative is aged 60 or over, is incapacitated or is a child whom the resident is liable to maintain by virtue of section 42(1) of the National Assistance Act 1948(8) (liability to maintain wife or husband and children)””.

Department of Health
31st March 1993

Virginia Bottomley
One of Her Majesty’s Principal Secretaries of
State

(7) Paragraph 2 was amended by regulation 26(a) of S.I. 1988/1445; paragraph 4 was amended by regulation 3(a) of S.I. 1988/910, regulation 26(b) of S.I. 1988/1445, and regulation 11(a) of S.I. 1990/1776.

(8) 1948 c. 29.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the National Assistance (Assessment of Resources) Regulations 1992 (“the principal Regulations”).

Regulation 3 inserts a new Regulation 6A into the principal Regulations to take account of the implementation of the Child Support Act 1991. Child support maintenance payments which are made to a resident in respect of a child living with the resident are to be treated as income other than earnings.

Regulation 4 amends regulations 11, 14, 15 and 21 of the principal Regulations to correct a minor drafting error which occurs in each of those provisions.

Regulation 5 makes amendments to regulations 16, 17, 22 and 25 of and paragraph 8 of Schedule 1 to the principal Regulations in relation to the treatment of payments by a third party towards the cost of a resident’s accommodation. These provide that voluntary payments in respect of any arrears due to a local authority which are made over directly to the authority are not to be taken into account, payments of income in respect of such arrears which are made over initially to the resident are to be treated as capital, and payments of capital in connection with the liability of the resident to pay for accommodation are otherwise to be treated as income.

Two new trust funds, the Independent Living (Extension) Fund and the Independent Living (1993) Fund, have been established, and regulation 6 makes an amendment to regulation 22 of the principal Regulations which is consequential upon the establishment of those funds.

Regulation 7 amends regulation 27 of the principal Regulations relating to the treatment of jointly held beneficial interests in land. This is to correct a drafting error in that provision, and the relevant provision has also been redrafted to make clear that any incumbrance secured on the whole beneficial interest should not be disregarded when valuing the resident’s share.

Regulation 8(1) corrects an error in paragraph 1 of Schedule 2 to the principal Regulations to provide that the relevant part of that paragraph is to continue to have effect after a period of interruption in the resident’s employment as a self-employed earner has ended. Regulation 8(2) and (3) amends Schedule 2 to the principal Regulations to enable residents in receipt of a carer premium under the income support scheme or of an invalid care allowance to qualify for the higher earnings disregard.

Regulation 9 substitutes a new paragraph 2 of Schedule 10 to the principal Regulations to require local authorities to disregard the value of any premises occupied in whole or in part by a child whom the resident is liable to maintain by virtue of section 42(1) of the National Assistance Act 1948, in addition to the amounts previously disregarded under the original paragraph.