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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 381**

**NATIONAL ASSISTANCE SERVICES**

**The National Assistance (Assessment of Resources)  
Amendment (No. 2) (Scotland) Regulations 2009**

*Made* - - - - *3rd November 2009*  
*Laid before the Scottish*  
*Parliament* - - - - *4th November 2009*  
*Coming into force* - - *26th November 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948(1), as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968(2), and all other powers enabling them to do so.

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) Amendment (No. 2) (Scotland) Regulations 2009 and come into force on 26th November 2009.

(2) In these Regulations “the principal Regulations” means the National Assistance (Assessment of Resources) Regulations 1992(3).

(3) These Regulations extend to Scotland only.

**Amendment to regulation 2 of the principal Regulations**

2. In regulation 2(1) of the principal Regulations (interpretation)(4) after the definition of “prospective resident” insert—

““relative” has the same meaning as in the Income Support Regulations;”.

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- (1) 1948 c.29. Section 22(5) was relevantly amended by the Social Security Act 1980 (c.30), Schedule 4, paragraph 2(1). The functions of the Secretary of State so far as exercisable in Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).
- (2) 1968 c.49 (“the 1968 Act”). Section 87(3) of the 1968 Act was amended by the Social Security Act 1980 (c.30), Schedule 4, paragraph 5(1); the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 20(2); the Social Security Act 1986 (c.50), Schedule 10, paragraph 41(2); the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), Schedule 9, paragraph 10(13) and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”), section 28(1). Section 87(4) of the 1968 Act was amended by the 1990 Act, Schedule 9, paragraph 10(13) and by the 2003 Act, section 28(1). By virtue of section 87(3) of the 1968 Act, accommodation provided under that Act or under section 25 of the 2003 Act is regarded as accommodation provided under Part III of the National Assistance Act 1948.
- (3) S.I. 1992/2977; relevantly amended by S.I. 1993/964, 1993/2230, 1995/858 and S.S.I. 2001/138, 2003/156, 2003/425 and 2006/113.
- (4) Regulation 2 was amended by S.I. 1993/964, 1993/2230, 1995/858 and S.S.I. 2001/138, 2003/156, 2003/425 and 2006/113.

### **Amendment to Schedule 4 to the principal Regulations**

**3.** In Schedule 4 to the principal Regulations (capital to be disregarded), for paragraph 2(5) substitute—

“**2.** The value of any premises—

- (a) which would be disregarded under paragraph 2 or 4(b) of Schedule 10 to the Income Support Regulations (premises acquired for occupation, and premises occupied by a former partner); or
- (b) occupied in whole or in part as their home by the resident’s—
  - (i) partner,
  - (ii) other family member or relative who is aged 60 or over or is incapacitated, or
  - (iii) child.”.

St Andrew’s House,  
Edinburgh  
3rd November 2009

*SHONA ROBISON*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations amend the National Assistance (Assessment of Resources) Regulations 1992 (“the principal Regulations”). The principal Regulations concern the assessment of a resident’s liability to pay for accommodation provided under the Social Work (Scotland) Act 1968 (“the 1968 Act”). By virtue of section 87(3) of the 1968 Act, accommodation provided under the 1968 Act or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 shall be regarded as accommodation provided under Part III of the National Assistance Act 1948.

Schedule 4 (introduced by regulation 21(2)) to the principal Regulations provides for capital which is to be disregarded in assessing the ability of a resident to pay for accommodation.

Regulation 3 amends the principal Regulations so that the capital disregard for the value of premises occupied by a partner or family member of a resident applies in relation to all partners (and not just those who are aged 60 or over or are incapacitated) and only in relation to other family members and relative who are aged 60 or over or are incapacitated.