

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS
AND ASSESSMENT OF RESOURCES) AMENDMENT (ENGLAND)
REGULATIONS 2008

2008 No. 593

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends the National Assistance (Assessment of Resources) Regulations 1992 (“the Assessment Regulations”) and the National Assistance (Sums for Personal Requirements) (England) Regulations 2003 (“the 2003 Regulations”). This instrument relates 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”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 By virtue of section 22 of the 1948 Act, local authorities are obliged to give effect to the Assessment Regulations and the 2003 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.
 - 4.2 This instrument increases the personal expenses allowances, the amount of the upper and lower capital limits and the savings disregards in line with inflation.
 - 4.3 This instrument also amends the Assessment Regulations in order to reflect amendments made to the Income Support (General) Regulations 1987 (“the Income Support Regulations”) by the Social Security (Miscellaneous Amendments) (No.4) Regulations 2006. These amendments to the Assessment Regulations provide that certain payments which are disregarded under the Income Support Regulations are also to be disregarded under the Assessment Regulations.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Assessment Regulations and the 2003 Regulations set out a framework which local authorities must follow when assessing a person's ability to pay for accommodation that is provided, or proposed to be provided, to him under Part 3 of the 1948 Act. It is standard practice for these Regulations to be amended each April to provide for annual uprating in line with inflation.

7.2 The 2003 Regulations set out the weekly amount, the Personal Expenses Allowance ("the PEA"), which local authorities are to assume, in the absence of special circumstances, that residents will need to retain for their personal requirements. This instrument increases the PEA from £20.45 per week to £21.15 per week, in order to reflect the increase in average earnings over the previous twelve months. This is expected to benefit around 250,000 supported residents.

7.3 Residents are expected to meet the cost to the local authority of providing their residential care where the resident's assessed capital exceeds the upper capital limit specified in the Assessment Regulations. Residents having capital below the upper limit are eligible for financial assistance from the local authority. Capital between the upper and lower capital limits is deemed to produce a tariff income at a rate of £1 for every £250 or part thereof of capital assets. Residents whose capital is below the lower capital limit are not expected to contribute to the cost of their residential care from their capital resources.

7.4 This instrument increases the upper capital limit from £21,500 to £22,250 and the lower capital limit from £13,000 to £13,500, in line with inflation. The increase in the lower capital limit is expected to benefit a few thousand supported residents. The increase in the upper capital limit is expected to benefit a few hundred residents.

7.5 In October 2003, as part of Pension Credit, the Department for Work and Pensions introduced a weekly Savings Credit for people aged 65 or over with low or modest incomes in addition to the basic state pension (*see* the State Pension Credit Act 2002 (c.16) and the State Pension Credit Regulations 2002 (S.I. 2002/1792)). In response, the Department of Health introduced a weekly savings disregard for the

purpose of assessing a person's ability to pay for residential care. The instrument provides for an uprating of the savings disregard in line with average earnings. This will increase the maximum savings disregard from £5.25 to £5.45 per week for single residents and from £7.85 to £8.15 per week for couples.

- 7.6 This instrument also makes amendments to the Assessment Regulations to ensure consistency with provisions previously introduced to the Income Support Regulations by the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2006, so that when assessment is being made of an individual's ability to contribute towards the costs of residential care:
- i. certain charitable and voluntary payments of income shall be disregarded in full in the calculation of income other than earnings;
 - ii. any payment made in consequence of any personal injury to a claimant or his or her partner, except where that payment is specifically intended to cover the costs of care, shall for a period of up to 52 weeks from the day of receipt of the first payment be disregarded (in the calculation of capital); and
 - iii. awards of certain damages are also to be disregarded, not only where those awards are held by the court (as at present) but where they are held subject to the order or direction of the court (in the calculation of capital).
- 7.7 The Department of Health has in previous years published a consultation paper giving details of these proposed changes in the assessment of a person's resources for the purposes of Part 3 of the 1948 Act. Given the very small number of comments received when the changes proposed related simply to cost of living increases; and given that consultation has previously taken place in relation to the changes proposed relating to personal injury awards; it has been decided this year not to undertake a consultation exercise. This has been communicated to key stakeholders.
- 7.8 However, the Department of Health intends to consult later in the year on more substantial changes to the Assessment Regulations and to the Charging for Residential Accommodation guide, following recommendations made to the Department of Health by a stakeholder group including Age Concern, Help the Aged, the Local Government Association, the National Association of Financial Assessment Officers, the Nursing Home Fees Agency, the Relatives & Residents Association, Counsel & Care and Mencap.

8. Impact

- 8.1 A 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. The Department of Health considers that the costs to local authorities of the increases in the amount of the PEA, the capital limits and the savings disregards will be met by increased income generated through residential care charges, due to expected increases in residents' incomes and savings.
- 8.3 A number of local authorities have argued that there could be cost implications for them in having to disregard personal injury payments in future. However, the Government believes that the principles involved here warrant the changes being made in relation to awards which are not specifically related to meeting the costs of care.

9. Contact

- 9.1 Andrew Palethorpe at the Department of Health Tel: 0113 254 6468 or e-mail: Andrew.Palethorpe@dh.gsi.gov.uk can answer any queries regarding the instrument.