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## STATUTORY INSTRUMENTS

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### 2001 No. 3441

## NATIONAL ASSISTANCE SERVICES, ENGLAND

### The National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001

<i>Made</i>	- - - -	<i>19th October 2001</i>
<i>Laid before Parliament</i>		<i>22nd October 2001</i>
<i>Coming into force</i>	- -	<i>24th October 2001</i>

The Secretary of State for Health, in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948<sup>(1)</sup>, sections 54(1) and 64(6) of the Health and Social Care Act 2001<sup>(2)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

#### Citation, commencement, and extent

1.—(1) These Regulations may be cited as the National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001, and shall come into force on 24th October 2001.

(2) These Regulations extend to England only<sup>(3)</sup>

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(1) 11/12 Geo. 6 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 4 to the Social Security Act [1986 \(c. 50\)](#).

(2) [2001 c. 15](#).

(3) 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 III of the 1948 Act are applied by section 87(3) and (4) 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 \(c. 19\)](#)), 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 \(c. 46\)](#), 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. Although section 54 of the Health and Social Care Act 2001 (“the 2001 Act”) extends

## Interpretation

### 2.—(1) In these Regulations—

“the 2001 Act” means the Health and Social Care Act 2001;

“the Act” means the National Assistance Act 1948;

“the Assessment Regulations” means the National Assistance (Assessment of Resources) Regulations 1992(4);

“the Directions” means the National Assistance Act 1948 (Choice of Accommodation) Directions 1992(5);

“lower capital limit” means the lower of the two capital amounts specified in regulation 28 of the Assessment Regulations(6);

“preferred accommodation” means Part 3 accommodation at the place of the resident’s choice within England and Wales as indicated by the resident, in accordance with paragraph 2 of the Directions;

“relevant liable relative” means a person who is liable under section 42 of the Act to maintain the resident and is making maintenance contributions;

“relevant preferred accommodation” means preferred accommodation which meets the conditions in paragraph 3(a), (c) and (d) of the Directions, but where the cost of providing the resident with that preferred accommodation would require the local authority to pay more than that authority would usually expect to pay in order to provide Part 3 accommodation suitable for a person with the assessed needs of that resident;

“relevant resident” means a resident—

- (a) to whom paragraph 1A of Schedule 4 to the Assessment Regulations (the twelve week property disregard) applies; or
- (b) who has entered into, or agreed to enter into, a deferred payment agreement with the local authority, as provided for in section 55 of the 2001 Act; and

“resident” means a person whom the local authority has assessed under section 47 of the National Health Service and Community Care Act 1990(7) as needing accommodation pursuant to section 21 of the Act (whether or not that person has become a resident in such accommodation).

### (2) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number; and
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

## Additional Payments

3.—(1) Regulation 4 applies if a resident has indicated that he wishes to be accommodated in relevant preferred accommodation.

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to both England and Wales, these Regulations are made by the Secretary of State who is the relevant authority empowered to make these regulations for England, *see* section 66 of the 2001 Act.

- (4) [S.I. 1992/2977](#); [S.I. 1992/2977](#) has been amended by [S.I. 1993/964](#); [S.I. 1993/2230](#); [S.I. 1994/825](#); [S.I. 1994/2386](#); [S.I. 1995/858](#); [S.I. 1995/3054](#); [S.I. 1996/602](#); [S.I. 1997/485](#); [S.I. 1998/497](#); [S.I. 1998/1730](#); [S.I. 2001/58](#); [S.I. 2001/1066](#); and [S.I. 2001/1124](#).
- (5) The Directions were issued annexed to the Department of Health Circular no. LAC (92)27. Paragraph 4 of the Directions (preferred accommodation outside the local authority’s usual limit) was revoked from 1st October 2001 by the National Assistance Act 1948 (Choice of Accommodation) (Amendment) (England) Directions 2001.
- (6) The relevant amount specified in regulation 28 of the Assessment Regulations as amended by [S.I. 2001/1066](#) is £11,500.
- (7) [1990 c. 19](#).

(2) Regulation 4 does not apply to any arrangements made under paragraph 4 of the Directions prior to 1st October 2001.

**4.—**(1) A local authority shall provide a resident with relevant preferred accommodation in the following circumstances—

- (a) if a third party other than a relevant liable relative agrees to make the additional payments; or
- (b) in the case of a relevant resident, if it is agreed that the additional payments will be made by one or both of the following persons—
  - (i) a third party other than a relevant liable relative, and
  - (ii) the resident himself, from any resource or combination of resources specified in paragraph (2)

and each person can reasonably be expected to make those additional payments for the duration of the arrangements.

(2) The resources referred to in paragraph (1)(b)(ii) are—

- (a) in the case of a resident who is a relevant resident by virtue of paragraph (a) or (b) of the definition of that term in regulation 2(1), any income or capital disregarded under Schedule 2, 3 or 4 to the Assessment Regulations, except capital disregarded under paragraph 1A of Schedule 4;
- (b) in the case of a resident who is a relevant resident by virtue of paragraph (a) only of that definition, capital not exceeding the lower capital limit; and
- (c) in the case of a resident who is a relevant resident by virtue of paragraph (b) only of that definition, any capital exceeding the lower capital limit, which may include the value of the resident's property which he occupies or formerly occupied as his only or main home, provided that if any additional payments are to be made from the value of that property they will form part of the relevant contributions under the deferred payment agreement.

### **Amendment of the Assessment Regulations**

**5.—**(1) After regulation 16 of the Assessment Regulations, there shall be inserted the following regulation—

#### **“Additional Payments**

**16A.—**(1) An amount equivalent to any additional payments made or due to be made by a resident from resources specified in paragraph (2) shall be treated as part of the income of the resident.

(2) The resources specified for the purposes of paragraph (1) are the resources specified in regulation 4(2) of the National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001<sup>(8)</sup> (additional payments from specified resources of relevant residents), except in a case falling within sub-paragraph (c) of that paragraph of that regulation where the additional payments are to be made from the value of the resident's property which he occupies or formerly occupied as his only or main home.”

(2) After paragraph (3) of regulation 28 of the Assessment Regulations, there shall be inserted the following paragraph—

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(8) [S.I. 2001/3441](#).

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

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“(4) For the purposes of paragraph (1), where a resident makes additional payments as provided for in regulation 4(2)(b) of the National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001 (additional payments from capital not exceeding the lower capital limit), the resident is to be treated as possessing capital equivalent to the amount of any additional payments.”

### **Revocation**

**6.** The National Assistance (Residential Accommodation) (Additional Payments) (England) Regulations 2001<sup>(9)</sup> are hereby revoked.

Signed by authority of the Secretary of State for Health

19th October 2001

*Jacqui Smith,*  
Minister of State  
Department of Health

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<sup>(9)</sup> S.I. 2001/3068.

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## EXPLANATORY NOTE

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

These Regulations make provision for additional payments to be made so that a person who has been assessed as needing residential accommodation can choose to live in accommodation which is more expensive than the local authority would usually pay for someone with that person's assessed needs. Under these Regulations the additional payments may be made by a third party, including a liable relative who is not making payments to maintain the resident. In certain circumstances, that is when the 12 weeks property disregard applies or in the case of a deferred payment agreement between the resident and the local authority, the resident himself may also contribute any or all of the additional payments, from specified resources set out in regulation 4(2).

These Regulations make consequential amendments to the National Assistance (Assessment of Resources) Regulations 1992, to enable additional payments made by a resident himself from any of the specified resources to be taken into account under those regulations, and to amend the regulation on tariff income (regulation 5).

These Regulations replace the National Assistance (Residential Accommodation) (Additional Payments) (England) Regulations 2001, which provided for a narrower range of resources from which a resident himself could make additional payments.