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STATUTORY INSTRUMENTS

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**2003 No. 2343**

**NATIONAL ASSISTANCE SERVICES, ENGLAND**

**The National Assistance (Assessment of Resources)  
(Amendment) (No. 2) (England) Regulations 2003**

<i>Made</i>	- - - -	<i>11th September 2003</i>
<i>Laid before Parliament</i>		<i>11th September 2003</i>
<i>Coming into force</i>	- -	<i>6th October 2003</i>

The Secretary of State for Health, in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) (Amendment) (No. 2) (England) Regulations 2003 and shall come into force on 6th October 2003.

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

(3) These Regulations apply to England only(3).

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- (1) 1948 c. 29; section 22(5) of the National Assistance Act 1948 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).
- (2) S.I.1992/2977; relevant amending instrument is S.I. 1998/1730.
- (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 3 of the 1948 Act are applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968 (c. 49) (“the 1968 Act”) (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) (“the 1998 Act”), 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.

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

2. In paragraph (1) of regulation 2 of the principal Regulations (interpretation)—
- (a) insert the following definitions at the appropriate place:
- ““the Pension Credit Regulations” means the State Pension Credit Regulations 2002(4);”;
- ““savings credit” means a savings credit under the State Pension Credit Act 2002(5);”;
- (b) for the definition of “less dependent resident” substitute—
- ““less dependent resident” means a resident who is in, or for whom accommodation is proposed to be provided in, premises which are not an establishment which is carried on or managed by a person who is registered under Part II of the Care Standards Act 2000(6);”.

### **Amendment of Schedule 3 to the principal Regulations**

3. In Schedule 3 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 17—
- (i) in sub-paragraph (a) after “(permitted allowances)” insert “or paragraph 3 of Schedule 4 to the Adoption and Children Act 2002(7);”;
- (ii) at the end add the following sub-paragraph—
- “(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the resident in accordance with regulations made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002.”;
- (b) after paragraph 28G, insert the following paragraphs—
- “**28H.**—(1) Where a resident is in receipt of savings credit as a person who has no partner and has qualifying income not exceeding the standard minimum guarantee—
- (a) the amount of that savings credit where the amount received is £4.50 or less; or
- (b) £4.50 of that savings credit where the amount received is greater than £4.50.
- (2) Where a resident—
- (a) has no partner;
- (b) has attained the age of 65; and
- (c) has qualifying income in excess of the standard minimum guarantee,
- a sum of £4.50.
- (3) Where a resident is in receipt of savings credit as a person who has a partner and has qualifying income not exceeding the standard minimum guarantee—
- (a) the amount of that savings credit where the amount received is £6.75 or less; or
- (b) £6.75 of that savings credit where the amount received is greater than £6.75.
- (4) Subject to sub-paragraph (5) where a resident—
- (a) has a partner;

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(4) S.I. 2002/1792.

(5) 2002 c. 16, *see* section 1(3)(b) and section 3.

(6) 2000 c. 14.

(7) 2002 c. 38.

- (b) has—
    - (i) attained the age of 65; or
    - (ii) has attained the qualifying age and his partner has attained the age of 65; and
  - (c) has qualifying income in excess of the standard minimum guarantee, a sum of £6.75.
- (5) Where the sum referred to in sub-paragraph (4) has been disregarded in the assessment of the resident’s partner’s income under these Regulations, sub-paragraph (4) does not apply to the resident.
- (6) For the purposes of this paragraph—
- (a) a resident has a partner if he would be considered to have a partner for the purposes of the Pension Credit Regulations<sup>(8)</sup>;
  - (b) “qualifying age” has the same meaning as in section 1(6) of the State Pension Credit Act 2002<sup>(9)</sup>;
  - (c) “qualifying income” shall be construed in accordance with regulation 9 of the Pension Credit Regulations and for the purposes of sub-paragraphs (3) and (4) the resident’s qualifying income shall include any qualifying income of his partner;
  - (d) “standard minimum guarantee” means, for the purposes of—
    - (i) sub-paragraphs (1) and (2), the amount prescribed by regulation 6(1)(b) of the Pension Credit Regulations; and
    - (ii) sub-paragraphs (3) and (4), the amount prescribed by regulation 6(1)(a) of the Pension Credit Regulations 2002.

**28I.** Any payment made to a temporary resident in lieu of concessionary coal pursuant to section 19(1)(b) or (c) of the Coal Industry Act 1994.”.

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

**4.** In Schedule 4 to the principal Regulations (capital to be disregarded) after paragraph 23, add the following paragraph—

“**24.** Any payment made to the resident in accordance with regulations made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002.”.

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(8) *S.I. 2002/1792* (“the 2002 Regulations”). In the 2002 Regulations a member of a married or unmarried couple is referred to as a partner and both members are referred to as partners (see regulation 1(3)). The phrases “married couple” and “unmarried couple” for the purposes of the 2002 Regulations are defined in section 17 of the State Pension Credit Act 2002 (c. 16). A “married couple” means a man and woman who are married to each other and are members of the same household. An “unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances. Regulation 5 of the 2002 Regulations sets out circumstances when persons are not treated as being members of the same household.

(9) *2002 c. 16*. See section 1(6) for the meaning of “qualifying age” and section 17(1) for the meaning of “pensionable age”.

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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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Signed by authority of the Secretary of State for Health

11th September 2003

*Stephen Ladyman*  
Parliamentary Under Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

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

These Regulations make further amendments to the National Assistance (Assessment of Resources) Regulations 1992 (“the principal Regulations”). The principal Regulations concern the assessment of the ability of a person to pay for accommodation arranged by local authorities under Part 3 of the National Assistance Act 1948.

Regulation 2 inserts two new definitions into, and updates a definition in, the principal Regulations.

Regulation 3 makes provision for payments made in accordance with regulations made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 to be disregarded as income. It also provides for up to £4.50 of any savings credit to be disregarded (£6.75 if a couple) where an individual has qualifying income not exceeding the standard minimum guarantee, and a sum of £4.50 (£6.75 if a couple) to be disregarded if an individual has qualifying income above the standard minimum guarantee.

Regulation 4 makes provision for payments made in accordance with regulations made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 to be disregarded as capital.

These Regulations do not impose a charge on business.