

2005 No. 3277

NATIONAL ASSISTANCE SERVICES, ENGLAND

**The National Assistance (Assessment of Resources) (Amendment)
(England) Regulations 2005**

<i>Made</i>	- - - -	<i>29th November 2005</i>
<i>Laid before Parliament</i>		<i>2nd December 2005</i>
<i>Coming into force</i>		
<i>regulations 1, 2 and 3(a)</i>		<i>5th December 2005</i>
<i>regulations 3(b) and 4</i>		<i>30th December 2005</i>

The Secretary of State for Health, in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948(a), makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) (Amendment) (England) Regulations 2005 and shall come into force on 5th December 2005 with the exception of regulations 3(b) and 4 which shall come into force on 30th December 2005.

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

(3) These Regulations apply in relation to England only(c).

Amendment of regulation 2 of the principal Regulations

2. In paragraph (1) of regulation 2 of the principal Regulations (interpretation) in the definition of “liable relative”, for “or former spouse” substitute “, former spouse, civil partner or former civil partner”.

(a) 1948 c.29; section 22(5) of the National Assistance Act 1948 (“the 1948 Act”) 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).

(b) S.I. 1992/2977; relevant amending instruments are S.I. 1996/602, 1997/485 and 2003/2343.

(c) Although section 22(5) of the National Assistance Act 1948 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 power 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 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 10A(a)—
 - (i) in sub-paragraphs (1)(a) and (3), after “spouse” insert “or civil partner”, and
 - (ii) in sub-paragraph (1)(b), after “spouse’s maintenance” insert “or his civil partner for that civil partner’s maintenance”;
- (b) in paragraph 17(b)—
 - (i) for sub-paragraph (1)(a) substitute—

“(a) pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002(c)”; and
 - (ii) for sub-paragraph (2) substitute—

“(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the resident pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002.”.

Amendment of Schedule 4 to the principal Regulations

4. In Schedule 4 to the principal Regulations (capital to be disregarded)—

- (a) for paragraph 24(d) substitute—

“**24.** Any payment made to the resident pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002.”; and
- (b) after paragraph 25 insert—

“**25A.** Any payment made to the resident under Part 2 (payments to persons over the age of 65) or Part 3 (payments to persons in receipt of guarantee credit) of the Age-Related Payments Regulations 2005(e).”.

Signed by authority of the Secretary of State for Health

29th November 2005

Liam Byrne
Parliamentary Under Secretary of State,
Department of Health

(a) Inserted by S.I. 1996/602 and amended by S.I. 1997/485.
(b) Amended by S.I. 2003/2343.
(c) 2002 c.38.
(d) Inserted by S.I. 2003/2343.
(e) S.I. 2005/1983.

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 and regulation 3(a) amend the principal Regulations in the light of the Civil Partnership Act 2004. The Civil Partnership Act 2004 provides that two people of the same sex may form a civil partnership and makes provision for civil partners to be treated in the same or similar way as spouses in relation to certain benefits and obligations.

Regulation 3(b) and regulation 4(a) amend the Schedules to the principal Regulations which deal with income and capital disregards to take account of the commencement of the Adoption and Children Act 2002.

Regulation 4(b) makes provision for payments made under Part 2 or 3 of the Age-Related Payments Regulations 2005 to be disregarded as capital.

These Regulations do not impose a charge on business.

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