

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS
AND ASSESSMENT OF RESOURCES) AMENDMENT (ENGLAND)
REGULATIONS 2010

2010 No. 211

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 Where a person goes into residential care supported by a local authority, the local authority is required to charge the person such sums as they are assessed as being able to pay. The Assessment is done using regulations made under the National Assistance Act 1948. This instrument uprates certain disregards and allowances in the residential charging regulations to ensure they maintain their value. In addition, it makes amendments as a consequence of changes to DWP benefits regulations. It also makes an amendment to bring the regulations into line with Government policy on the treatment of property occupied by a care home resident's partner.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 To effect an annual uprating of certain elements within residential charging regulations and make other minor amendments.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
 - 5.2 Similar regulations exist in Scotland, Wales and Northern Ireland.
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**
 - *What is being done and why*
 - 7.1 Each year certain disregards and allowances in relation to capital and income are automatically uprated using established formulae. These concern

items which are disregarded in the calculation of what care home residents can afford to pay and the personal expenses allowance (PEA), which is the amount such residents must have after charging to spend on personal items. The uprating ensures these items retain their value over time.

7.2 This instrument also makes consequential amendments as a result of changes to Income Support (IS) regulations. The IS regulations make changes to the qualifying age for receiving a £20 disregard for people who get a disability premium. This will rise in stages from 60 to 65 as a result of increases in the retirement age. This is imported directly into the residential charging regulations, so no amendment is needed to reflect the change for people who receive the premium. However, the £20 disregard also applies to people who are otherwise ineligible for the disability premium but satisfy a number of conditions, principally linked to the receipt of other benefits. It is necessary to amend the residential charging regulations to ensure people receiving the disability premium are not made worse off compared to other care home residents entitled to the £20 disregard. The change will not lead to people who currently entitled to the disregard losing it. The effect will be that, in future, people will have to wait longer – eventually until they are 65 – before they become eligible for the £20 disregard.

7.3 Government policy is that if the resident's partner lives in one of the resident's properties, that property should be disregarded in the financial assessment for charging. It was discovered that the regulations on this disregard are in conflict with the guidance and Government policy. We have established that local authorities are applying the guidance and changing the regulations is not, therefore, a New Burden on local authorities. The regulations amend the charging regulation so that a property is disregarded if it is lived in by the resident's partner.

Consolidation

7.4 These National Assistance (Assessment of Resources) Regulations 1992 have been amended many times and the Department is keenly aware of the need to consolidate the Regulations at some point. There are no immediate plans to do this given that there are no resources for this work. Nevertheless, it is our intention to keep the issue of consolidation under review so that it can be proceeded with when resources become available. .

8. Consultation outcome

8.1 No consultation was carried out. The changes are made using long established formulae. The consequential amendments maintain a level playing field for charging. The property disregard amendment reflects existing local authority custom and practice in charging.

9. Guidance

9.1 Guidance on the application and interpretation of the residential charging regulations is provided in the Charges for Residential Accommodation Guide (CRAG). This will be amended to reflect the changes and a new version issued by the time the regulations come into effect.

10. Impact

10.1 No impact is foreseen on business, charities or voluntary bodies.

10.2 The impact on the public sector should be minimal. The regulations make minor modifications to the charging regulations used to make a financial assessment of what local authority supported care home residents should pay towards the cost of their care.

10.3 An Impact Assessment is not required for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes to the regulations aim to ensure that care home residents assessment for charging is modified so disregards and allowances maintain their value, charges reflect changes in other legislation and reflect Government policy. The regulations will be reviewed annually. The next scheduled review is due for completion by April 2011.

13. Contact

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