

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2003 No. (W.)

**NATIONAL ASSISTANCE
SERVICES, WALES**

The National Assistance
(Assessment of Resources)
(Amendment) (Wales) Regulations
2003

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 (“the resident”) to pay for accommodation arranged by local authorities under Part III of the National Assistance Act 1948. Part III accommodation is arranged for persons aged 18 or over who by reason of age, illness, disability or any other circumstances, are in need of care and attention which is not otherwise available to them, and for expectant and nursing mothers in similar need.

The principal Regulations provide that a resident shall be assessed as able to pay for Part III accommodation at the standard rate if that resident’s capital calculated in accordance with the principal Regulations, exceeds an upper capital limit of £19,000. These Regulations amend the principal Regulations to increase the upper capital limit from £19,000 to £20,000. The principal Regulations also provide for the calculation of a resident’s income to take account of capital within a band between the upper capital limit and a lower capital limit. These Regulations amend

the upper and lower capital limits. Each £250 or part of £250 within this band is treated as equivalent to weekly income of £1.

Regulation 4 makes amendments to the Principal Regulations with the effect that all periodical payments received in settlement of a personal injury claim, whether by virtue of an agreement or a court order, are, to the extent that they are not income, treated as income.

Regulation 5 amends the principal Regulations so as to replace reference to “invalid care allowance” with the term “carer’s allowance”.

Regulation 6 amends the Principal Regulations with the effect that payments of income either, (a) received from trusts whose funds derive from personal injury settlements to the resident, or (b) from an annuity purchased with such funds or (c) by virtue of any agreement or court order to make personal injury payments, are disregarded in their entirety where they are intended and used for a need of the resident which was not taken into account in fixing the cost (or standard rate) of the accommodation provided. Otherwise the first £20 of such income is disregarded.

Regulation 7 and 8(4) amend the principal Regulations so as to exclude from calculations of income or capital any payments made to or on behalf of residents relating to welfare services in respect of which the National Assembly for Wales has made a grant to the local authority under s.93(2) of the Local Government Act 2000. Regulation 7 also excludes from calculation of income, guardian’s allowance and child tax credit. Regulation 8(1) amends the principal Regulations so as to exclude from the calculation of a resident’s capital the value of the resident’s interest in a home which was formerly occupied with a spouse or partner who is now divorced or estranged if the home is still occupied by the former partner as a lone parent.

Regulation 8(2) amends the Principal Regulations so as to maintain the current position regarding the treatment of arrears of various social security benefits in the assessment of a resident’s capital and removes a reference to a paragraph of the Income Support (General) Regulations 1987 which has been revoked.

Regulation 8(3) provides a capital disregard for any arrears or any concessionary payment made to compensate for arrears due to non-payment of tax credits for a period of 52 weeks from the date of their payment.

2003 No. (W.)

**NATIONAL ASSISTANCE
SERVICES, WALES**

The National Assistance
(Assessment of Resources)
(Amendment) (Wales) Regulations
2003

Made 2003

Coming into force 7 April 2003

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred upon the Secretary of State by section 22(5) of the National Assistance Act 1948⁽¹⁾ and now vested in the National Assembly for Wales⁽²⁾:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2003 and come into force

⁽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⁾ The functions of the Secretary of State under section 22(5) of the National Assistance Act 1948 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(a) for the purposes of this regulation and regulations 3(1), 5, 7(1), 8(1) and 8(4) on 1st April 2003,

(b) for the purposes of all the other regulations and parts of regulations, on 7th April 2003.

(2) In these Regulations “the principal Regulations” (“y prif Reoliadau”) means the National Assistance (Assessment of Resources) Regulations 1992(3).

(3) These Regulations apply to Wales only.

Amendment of the principal Regulations – capital limits

2.—(1) The principal Regulations are amended in accordance with the following paragraphs of this regulation.

(2) In regulation 20 (capital limit) for the figure “£19,000” substitute the figure “£20,000”.

(3) In regulation 28(1) (calculation of tariff income from capital) for the figure “£11,750”, where it appears, substitute the figure “£12,250” and for the figure “£19,000” substitute the figure “£20,000”.

Amendment of the principal Regulations – interpretation

3.—(1) In paragraph (1) of regulation 2 of the principal Regulations (interpretation)—

(a) insert the following definitions at the appropriate place:

““carer’s allowance” means a carer’s allowance under the Social Security Contributions and Benefits Act(4);”;

““lone parent” has the same meaning as in the Income Support (General) Regulations(5);”;

(b) omit the definition of “invalid care allowance”.

(2) In paragraph (1) of regulation 2 of the principal Regulations, insert the following definitions at the appropriate place:

““child tax credit” means a child tax credit under the Tax Credits Act(6);”;

““guardian’s allowance” means a guardian’s allowance under the Social Security Contributions and Benefits Act(7);”;

(3) S.I. 1992/2977; relevant amending instruments are S.I. 1996/602 and S.I. 2002/814 (W.94).

(4) 1992 c.4 *See* section 70 as amended by S.I. 2002/1457

(5) S.I. 1987/1967 *See* regulation 2

(6) 2002 c.21 *See* section 8

(7) 1992 c.4 *See* section 77 as amended by the Tax Credits Act 2002 c. 21

““working tax credit” means a working tax credit under the Tax Credits Act(8);”.

Amendment of regulation 16 of the principal Regulations

4. After paragraph (4) of the principal Regulations (capital treated as income) insert the following paragraph—

“(5) Where an agreement or court order provides that payments shall be made to the resident in consequence of any personal injury to the resident and that such payments are to be made, wholly or partly, by way of periodical payments received by the resident, to the extent that they are not a payment of income they shall be treated as income.”

Amendment of Schedule 2 to the principal Regulations

5. In paragraph 3(2)(a) of Schedule 2 to the principal Regulations (sums to be disregarded in the calculation of earnings), for the words “an invalid care allowance” substitute the words “ a carer’s allowance”.

Amendment of Schedule 3 to the principal Regulations – paragraphs 10 and 30

6.—(1) In paragraph 10 of Schedule 3 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) in sub-paragraph (1), for the words “(charitable or voluntary payments) of any charitable or of any voluntary payment” substitute “(relevant payments) of any relevant payment”;
- (b) in sub-paragraph(2) for the words “charitable payment or voluntary payment” substitute the words “relevant payment”;
- (c) after subparagraph (2), add the following subparagraph—
 - “(3) In this paragraph, “relevant payment” means-
 - (a) a charitable payment
 - (b) a voluntary payment
 - (c) a payment (not falling within subparagraph (a) or (b)) from a trust whose

(8) 2002 c.21 See section 10

funds are derived from a payment made in consequence of any personal injury to the resident;

- (d) a payment under an annuity purchased—
 - (i) pursuant to any agreement or court order to make payments to the resident; or
 - (ii) from funds derived from a payment made, in consequence of any personal injury to the resident; or
- (e) a payment (not falling within sub-paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury to the resident.”.

(2) In paragraph 30 of Schedule 3 to the principal Regulations—

- (a) for the words “charitable or voluntary payments” substitute the words “relevant payments”; and
- (b) at the end, add the following sub-paragraph—

“(2) In this paragraph “relevant payment” has the same meaning as in paragraph 10(3).”.

Amendment of Schedule 3 - paragraphs 28D – F

7.—(1) In Schedule 3 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings), after paragraph 28C, add the following paragraphs—

“**28D.** Any payment made by a local authority to or on behalf of the resident relating to welfare services in respect of which the National Assembly has paid a grant to the local authority under section 93(2) of the Local Government Act(9), where the resident qualified for that payment.

28E. Any payment made under the Community Care (Direct Payments) Act 1996(10) or under regulations made under section 57 of the Health and Social Care Act 2001(11) except where that payment is paid in relation to the provision of residential accommodation under the Act

(9) 2000 c. 22
(10) 1996 c. 30
(11) 2001 c. 15

28F. Any payment made under section 17A of the Children Act 1989⁽¹²⁾ except where that payment is paid in relation to the provision of residential accommodation under the Act. ”

(2) In Schedule 3 to the principal Regulations after paragraph 28D, add the following paragraphs—

“28G. Any guardian’s allowance.

28H. Any child tax credit.”

Amendment of Schedule 4 to the principal Regulations

8.—(1) In Schedule 4 to the principal Regulations (capital to be disregarded) after paragraph 2, add the following paragraph—

“2A. Where a resident has ceased to occupy a dwelling, which was formerly occupied as the home, following his estrangement or divorce from his former partner, the value of the resident’s interest in that dwelling where it is still occupied as the home by the former partner who is a lone parent.”

(2) In paragraph 6 of Schedule 4 to the principal Regulations—

- (a) after the words “(arrear of specified payments)” insert the words “as in force immediately before the 7th April 2003”; and
- (b) for “, 9 or 9A” substitute “or 9”.

(3) In schedule 4 to the principal Regulations , after paragraph 6, add the following paragraph—

“6A. Any arrears of , or any concessionary payment made to compensate for arrears due to the non-payment of —

- (a) working families tax credit under section 128 of the Social Security Contributions and Benefits Act⁽¹³⁾
- (b) disabled person’s tax credit under section 129 of the Social Security Contributions and Benefits Act⁽¹⁴⁾
- (c) child tax credit, or
- (d) working tax credit,

but only for a period of 52 weeks from the date of the receipt of the arrears or of the concessionary payment.”

⁽¹²⁾ 1989 c.41

⁽¹³⁾ 1992 c.4 See section 128 as amended by the Jobseekers Act 1995 c. 18 and the Tax Credits Act 1999 c. 10

⁽¹⁴⁾ See section 129 as amended by the Local Government Finance Act 1992 c. 14, the Social Security (Incapacity for Work) Act 1994 c.18, the Jobseekers Act 1995 c. 18, the Tax Credits Act 1999 c.10 and the Welfare Reform and Pensions Act 1999 c.30.

(4) In Schedule 4 to the principal regulations after paragraph 21, add the following paragraphs—

“**22.** Any payment made by a local authority to or on behalf of the resident relating to welfare services in respect of which the National Assembly for Wales has paid a grant to the local authority under section 93(2) of the Local Government Act, where the resident qualified for the payment.

23. Any payment made under the Community Care (Direct Payments) Act 1996⁽¹⁵⁾ or under regulations made under section 57 of the Health and Social Care Act 2001⁽¹⁶⁾ except where that payment is paid in relation to the provision of residential accommodation under the Act.

24. Any payment made under section 17A of the Children Act 1989⁽¹⁷⁾ except where that payment is paid in relation to the provision of residential accommodation under the Act.”

9. The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2002⁽¹⁸⁾ are revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹⁹⁾

Date

The Presiding Officer of the National Assembly

⁽¹⁵⁾ 1996 c. 30
⁽¹⁶⁾ 2001 c. 15
⁽¹⁷⁾ 1989 c.41
⁽¹⁸⁾ S.I. 2002/814 (W.94)
⁽¹⁹⁾ 1998 c.38.