WELSH STATUTORY INSTRUMENTS

2003 No. 931 (W.121)

NATIONAL ASSISTANCE SERVICES, WALES

The National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources)(Wales) Regulations 2003

Made - - - -	*26th March 2003*
Coming into force - -	*7th April 2003*

The National Assembly for Wales, in exercise of powers conferred by section 22(5) of the National Assistance Act 1948(**1**) and sections 54(1), 55(7) and 64(6) of the Health and Social Care Act 2001(**2**) hereby makes the following Regulations:—

Citation, commencement, and application

1.—(1) These Regulations may be cited as the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources)(Wales) Regulations 2003 and shall come into force on 7th April 2003.

(2) These Regulations apply to Wales only(**3**).

Interpretation

2. In these Regulations—

"the 2001 Act" ("*Deddf 2001*") means the Health and Social Care Act 2001;

"the Act" ("*y Ddeddf*") means the National Assistance Act 1948(**4**);

"the Assessment Regulations" ("*y Rheoliadau Asesu*") means the National Assistance (Assessment of Resources) Regulations 1992(**5**);

(**1**) 1948 c. 29. Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), transfers all the functions of the Secretrary of State under the 1948 Act, so far as they are exercisable in relation to Wales, to the National Assembly for Wales.

(**2**) 2001 c. 15.

(**3**) Although section 54 of the Health and Social Care Act 2001("the 2001 Act") extends to both Wales and England, these Regulations are made by the National Assembly for Wales which is the relevant authority empowered to make regulations for Wales only, *see* section 66 of the 2001 Act.

(**4**) 1948 c. 29.

(**5**) 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 in relation to England and Wales and by S.I. 2001/276(W.12); S.I. 2001/1409(W.95) and S.I. 2002/814(W.94) in relation to Wales.

"the Directions" ("*y Cyfarwyddiadau*") means the National Assistance Act 1948 (Choice of Accommodation) Directions 1993(**6**);

"lower capital limit" ("*terfyn cyfalaf isaf*") means the lower of the two capital amounts specified in regulation 28 of the Assessment Regulations;

"preferred accommodation" ("*llety dewisol*") means 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 preferred accommodation" ("*llety dewisol perthnasol*") 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" ("*preswylydd perthnasol*") means a resident—

(a) to whom paragraph 1A of Schedule 4 to the Assessment Regulations (capital to be disregarded in first twelve weeks) applies during the period of its application, or

(b) who has entered into or who has agreed to enter into a deferred payment agreement with the local authority, as provided for in section 55 of the 2001 Act; and

"resident" ("*preswylydd*") means a person whom the local authority have 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 as yet actually taken up residence 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 or she wishes to be accommodated in relevant preferred accommodation.

(2) Regulation 4 does not apply to any arrangements made under paragraph 4 of the Directions prior to the coming into force of these Regulations.

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

(a) if a third party agrees to make the additional payments(**8**); or

(b) in the case of a relevant resident, if the additional payments will be made by one or both of the following persons;

(i) a third party,

(ii) the resident himself or herself, 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—

(**6**) The Directions dated 21 January 1993 were issued by the Welsh Office together with Welsh Office Circular 12/93
(**7**) 1990 c. 19.
(**8**) For "additional payments" *see* section 54(2) of the Health and Social Care Act 2001.