



Social Security (Long-term Residential Care) Regulations 2005

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 27th day of June 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 155 of the Social Security Act 1964, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

1	Title	10	Assets exempt from means assessment
2	Commencement	11	Income exempt from means assessment
3	Interpretation	12	Personal allowance
4	Entitlement of spouse or partner to veteran's pension		
5	Classes of exempt persons		
6	Elderly victim of crime		
7	Clothing allowance		
8	Gifting period		
9	Allowable gifts		

Schedule

Offences under Crimes Act 1961

Regulations

1 Title

These regulations are the Social Security (Long-term Residential Care) Regulations 2005.

2 Commencement

These regulations come into force on 1 July 2005.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Accident Compensation Corporation means the corporation of that name continued by section 259 of the Injury Prevention, Rehabilitation, and Compensation Act 2001

Act means the Social Security Act 1964

compulsory care order has the meaning given to it by section 5 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

restricted patient has the meaning given to it by section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

special patient has the meaning given to it by section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

veteran's pension has the meaning given to it by section 3 of the Act.

(2) Terms used in these regulations that are defined in section 136 of the Act have the meanings given to them by that section.

4 Entitlement of spouse or partner to veteran's pension

(1) This regulation applies to any person—

(a) who is not a resident assessed as requiring care; and
(b) whose spouse or partner is, on or after 1 July 1993, a resident assessed as requiring care in respect of whom a funder is paying some or all of the cost of contracted care services under section 141 or section 142 of the Act; and

(c) who is in receipt of a veteran's pension, or whose spouse or partner is in receipt of a veteran's pension.

(2) Every person to whom this regulation applies is entitled to receive a veteran's pension at the rate payable to a person who is single—

(a) stated in clause 1(a) of Schedule 11 of the War Pensions Act 1954, if the person has been granted a living alone payment under section 74U of that Act; or

- (b) stated in clause 1(b) of Schedule 11 of the War Pensions Act 1954, if the person has not been granted a living alone payment under section 74U of that Act.

5 Classes of exempt persons

For the purposes of Part 4 of the Act, a resident assessed as requiring care is an exempt person if that resident is a person who—

- (a) received long-stay geriatric care in a geriatric hospital before 1 July 1993; or
- (b) was receiving long-stay care in one of the following hospitals prior to the closure of the hospital:
 - (i) Kimberley Hospital (Levin):
 - (ii) Templeton Hospital (Christchurch):
 - (iii) Mangere Hospital (Manukau City):
 - (iv) Braemar Hospital (Nelson); or
- (c) has intellectual disabilities and was receiving long-stay care in a psychiatric hospital (not being a hospital specified in paragraph (b)) prior to the closure of the hospital; or
- (d) is subject to a compulsory treatment order made under section 30 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (e) is declared a restricted patient under section 55 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (f) is a special patient, whether or not that person has been granted leave of absence from a hospital—
 - (i) under section 50 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (ii) under section 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (g) is subject to a compulsory care order; or
- (h) is removed to any hospital or rest home under section 79 of the Health Act 1956; or
- (i) is committed to any hospital or rest home under section 126 of the Health Act 1956; or
- (j) was receiving continuing hospital care in a rest home or hospital before 1 July 1993.

6 Elderly victim of crime

- (1) For the purposes of Part 4 of the Act, a person is an elderly victim of crime if that person—
 - (a) is a victim of an offence under the Crimes Act 1961 that—
 - (i) is specified in the Schedule; and
 - (ii) was committed after 1 May 1997; and
 - (b) has suffered personal injury as a result of the commission of that offence; and
 - (c) has had a claim in respect of the personal injury accepted by the Accident Compensation Corporation; and
 - (d) has within 12 months of the date of the personal injury been needs assessed as having an injury-related need for long-term residential care; and
 - (e) continues to have an injury-related need for long-term residential care.
- (2) For the purposes of Part 4 of the Act, every person who immediately before 1 July 2005 had been notified as being, or had been treated as having been, an elderly victim of crime, must, on and after the commencement date, be treated as a person assessed in accordance with subclause (1) as an elderly victim of crime.
- (3) For the purposes of Part 4 of the Act,—
 - (a) a person who is assessed as an elderly victim of crime under subclause (1) is no longer an elderly victim of crime on the date on which the person is needs assessed as having no injury-related need for long-term residential care; and
 - (b) a person who is treated as an elderly victim of crime under subclause (2) is no longer an elderly victim of crime on the date on which the person is needs assessed as having no injury-related need for long-term residential care.

7 Clothing allowance

- (1) A clothing allowance is payable on, or as soon as is practicable after, 1 April each year to both classes of persons specified in section 154(1) of the Act.
- (2) The clothing allowance is \$218.64.

8 Gifting period

For the purpose of paragraph (b) of the definition of assets in clause 4 of Part 2 of Schedule 27 of the Act, the gifting period is the period that commences 5 years before the date of means assessment.

9 Allowable gifts

- (1) For the purpose of paragraph (b) of the definition of assets in clause 4 of Part 2 of Schedule 27 of the Act, allowable gifts are gifts of real or personal property (for example, money) gifted during the gifting period that—
 - (a) are gifted by any of the following persons:
 - (i) the person being means assessed;
 - (ii) the spouse or partner of the person being means assessed;
 - (iii) the person being means assessed and that person's spouse or partner jointly; and
 - (b) have a total value—
 - (i) not exceeding \$5,000 each year (**the gifting amount**); or
 - (ii) exceeding the gifting amount but which may be offset as prescribed in subclause (2).
- (2) If during any year of the gifting period the person being means assessed makes gifts of real or personal property that have a total value exceeding the gifting amount, then the difference in value between the total value of the gifts gifted in that year and the gifting amount may be offset against the balance of the gifting amount in each of the remaining subsequent years of the gifting period, if any.
- (3) For the purpose of subclause (2) **balance of the gifting amount in each of the remaining subsequent years of the gifting period** is the total of the gifting amounts for each of those years less the total value of allowable gifts gifted in those years.
- (4) If the person being means assessed and that person's spouse or partner are both in long-term residential care, then the value of any gift made jointly by that person and that person's spouse or partner is to be apportioned equally between that person and that person's spouse or partner.

10 Assets exempt from means assessment

- (1) For the purpose of paragraph (f) of the definition of exempt assets in clause 4 of Part 2 of Schedule 27 of the Act, the following assets are exempt assets:
 - (a) household furniture and effects:
 - (b) personal belongings such as clothing and jewellery:
 - (c) personal collectables or family treasures or taonga such as artworks, books, stamps, and antiques:
 - (d) any interest in one car or similar vehicle that is for the personal use of the person's dependent child; but this exemption does not apply—
 - (i) where an election has been made under clause 2 of Part 1 of Schedule 27 of the Act; or
 - (ii) where the exemption in paragraph (b) of the definition of exempt assets in clause 4 of Part 2 of Schedule 27 of the Act applies.
- (2) For the purpose of paragraph (f) of the definition of exempt assets in clause 4 of Part 2 of Schedule 27 of the Act, exempt assets include an amount of assets that represents the total increase in value of the non-exempt assets since the date of the last means assessment.
- (3) For the purpose of subclause (2), **non-exempt assets** means the non-exempt assets that have earlier been determined, by a means assessment as to assets, to be equal to or less than the applicable asset threshold.
- (4) Subclause (2) does not apply in respect of a review of a means assessment under section 150(1)(b) or section 150(1)(c) of the Act.

11 Income exempt from means assessment

For the purpose of paragraph (k) of the definition of income in clause 5 of Part 3 of Schedule 27 of the Act, the following types of income are not to be included in a means assessment as to income:

- (a) any ex gratia payment made by the Government of New Zealand or the Government of any other country to the person because the person or the person's spouse or partner was a prisoner of war or civilian internee of Japan during the Second World War:

- (b) any interest derived from an ex gratia payment referred to in paragraph (a):
- (c) any interest derived from any pre-paid funeral of the person or of the person's spouse or partner that is referred to in paragraph (d) of the definition of exempt assets in clause 4 of Part 2 of Schedule 27 of the Act.

12 Personal allowance

The personal allowance defined in clause 5 of Part 3 of Schedule 27 of the Act is \$30.87 per week.

Schedule Offences under Crimes Act 1961

r 6(1)

Sections of the Crimes Act 1961

Offences

87	Riot
128B	Sexual violation
129	Attempted sexual violation and assault with intent to commit sexual violation
129A	Sexual conduct with consent induced by certain threats
135	Indecent assault
138	Sexual exploitation of person with significant impairment
141	Indecent assault on man or boy
142	Anal intercourse
142A	Compelling indecent act with animal
145	Criminal nuisance
156	Duty of persons in charge of dangerous things
157	Duty to avoid omissions dangerous to life
173	Attempt to murder
188	Wounding with intent
189	Injuring with intent
190	Injuring by unlawful act
191	Aggravating wounding or injury
192	Aggravated assault
193	Assault with intent to injure
196	Common assault
197	Disabling
198	Discharging firearm or doing dangerous act with intent
199	Acid throwing
200	Poisoning with intent
201	Infecting with disease
202C	Assault with weapon
204A	Female genital mutilation

**Sections of the
Crimes Act 1961**208
209
232
234
235
236
267
269**Offences**Abduction for purposes of marriage or sexual connection
Kidnapping
Aggravated burglary
Robbery
Aggravated robbery
Assault with intent to rob
Arson
Intentional damage

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 2005, prescribe—

- the entitlement to a veteran's pension, and the rate of pension, payable to the spouse or partner of a person in long-term residential care:
- the classes of persons who are exempt from the operation of the income and asset-testing regime:
- how a person is to be assessed as being, or no longer being, an elderly victim of crime:
- the classes of persons entitled to payment of a clothing allowance, and the amount of that allowance:
- the gifting period during which the value of assets gifted is included in a means assessment as to assets:
- the value of allowable gifts excluded from a means assessment as to assets:
- additional categories of assets declared exempt from a means assessment as to assets:
- additional categories of income that are exempt from a means assessment relating to income:

- the amount of the weekly personal allowance that a person is not required to contribute toward his or her care in a hospital or rest home.
-

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 30 June 2005.

These regulations are administered in the Ministry of Social Development and the Ministry of Health.
