



## SCOTTISH EXECUTIVE

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Circular No. **HDL (2003) 7**

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5 March 2003

Dear Colleague

### **NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (SCOTLAND) REGULATIONS 2003**

### **NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2003**

### **COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002**

#### **Summary**

1. This circular issues new and revised guidance on the charging for residential care in care homes. Specifically, it attaches:

Annex A, announcing the revised Personal Expenses Allowance (PEA) of £17.50 from 7 April 2003 for local authority supported care homes residents;

Annex B - revised guidance on the 12 week property disregard on permanent entry to residential and nursing care;

Annex C - a set of worked examples on the interaction and practical application of top ups and deferred payments with free personal and nursing care and the residential care charging rules;

Annex D - endorsement of COSLA's guidance to local authorities on the recent House of Lords Ruling in the case of Robertson v Fife Council;

Annex E – advice on the minor amendment to the National Assistance (Assessment of Resources) Regulations 1992 to restore the pre-14 October 2002 treatment of arrears of specified benefits and related concessionary payments;

Annex F – advice on the disregard of statutory adoption/ paternity pay from the financial assessment for residential care; and

Annex G – a new updated version of the Charging for Residential Accommodation Guide. The guide has been updated to take account of the new arrangements for free personal and nursing care, top ups and deferred payments (implemented in July 2002) as well as the guidance in Annexes A, B, E and F of this circular.

### **Action**

2. Local authorities should replace their existing Charging for Residential Accommodation Guidance with the updated Guide at Annex G.

### **Regulations**

3. Copies of The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2003, which will come into force on 7 April 2003, and The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2003, effective from 28 February, will be available from the Stationery Office (telephone 0131 228 4181) or on the Scottish Statutory Instruments section of the HMSO Website at:

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm>

### **Enquiries**

4. All enquiries relating to this letter and attachments should be addressed to Peter Stapleton (e-mail [peter.stapleton@scotland.gsi.gov.uk](mailto:peter.stapleton@scotland.gsi.gov.uk), telephone 0131 244 3515) or Agnes Rennick, (e-mail [agnes.rennick@scotland.gsi.gov.uk](mailto:agnes.rennick@scotland.gsi.gov.uk), telephone 0131 244 3782)

5. Further copies of this letter and attachments are available to interested parties from Agnes Rennick.

6. This circular replaces paragraphs 10 to 13 of Community Care Circular No: CCD4/2001, Guidance Package Index Ref: F2 which are hereby revoked.

## **Future Changes**

7. A number of minor revisions to the charging arrangements for residential care are currently under consideration, including changes in response to the new Supporting People payments, Working Tax Credit, Child Tax Credit and Guardian's Allowance. We will issue separate advice on these issues soon.

Yours sincerely

MISS T. S. TEALE  
Head of Community Care Division 1

## **ANNEX A**

### **NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (SCOTLAND) REGULATIONS 2003**

#### **Legal basis**

1. The amounts that local authorities allow in their charging assessments for personal expenses for people placed in residential accommodation are prescribed in regulations under section 22(4) and (4A) of the National Assistance Act 1948. These amounts are usually increased each April in line with the uprate of the PEA within Income Support Regulations.

2. The standard amount of the Personal Expenses Allowance (PEA) is specified each year in the National Assistance (Sums for Personal Requirements) (Scotland) Regulations and is the same for each resident whether they are placed in a local authority or independent sector care home.

#### **New PEA Amount From 7 April 2003**

3. Subject to Parliamentary approval, the revised PEA of £17.50 comes into force on 7 April 2003 and applies to all residents in care homes receiving help from local authorities towards the cost of their care.

#### **Guidance on PEA**

4. Local authorities are reminded that the PEA should not be spent on aspects of board, lodgings and care that have been contracted for by the local authority and/or assessed as necessary to meet individuals' needs by the local authority and NHSScotland. In this regard, local authorities should ensure that an individual resident's need for continence supplies is fully reflected in his or her care plan. Neither local authorities nor providers of residential care have the authority to require residents to spend their PEA in particular ways, and pressure of any kind to the contrary is extremely poor practice.

5. Local authorities are reminded that, based on a financial assessment of an individual's resources under the Assessment of Resources Regulations, individuals must be left with the full value of the PEA. It is then up to each resident to determine how the PEA is spent. This does not preclude residents buying extra services from the care home, where these are genuinely additional to those services that have been contracted for by the local authority and/or have been assessed as necessary by the local authority or NHSScotland. Nor does it preclude arrangements agreed between the resident and the care home, particularly where the care home manager is acting as an agent or appointee on behalf of the resident, for the PEA received by the resident to be reduced on an occasional or routine basis for the purchase of additional services. Local authorities are also reminded that under section 22(4) of the National Assistance Act they have the power to increase the PEA in individual cases. This will be particularly important for residents where certain activities or services, although not specifically included in their care plan, can nevertheless contribute significantly to optimum independence and well being.

#### **Charging for Residential Accommodation Guide**

The consolidated guidance has been updated to reflect the uprate of the PEA.

## ANNEX B.

### 12-Week Property Disregard On Permanent Entry To Residential And Nursing Care

#### Background

1. The 12-week property disregard came into force on 9 April 2001 and followed a commitment in the Scottish Executive's response to the Royal Commission on long term care. Under the disregard, residents should have the value of their property disregarded for the first 12 weeks of their stay in residential care. The National Assistance Act (Assessment of Resources) Regulations 1992 and the Charging for Residential Accommodation Guide have been amended to reflect this change.

#### Policy Context

2. The disregard provides limited state financial support to people who enter residential accommodation and offers residents a breathing space between entering a care home on a permanent basis and deciding how best to fund the move, or whether to return to their own homes

3. In particular local authorities will need to be aware of the following:

a) The disregard does not affect current property disregards as described in Charging for Residential Accommodation Guidance, and does not replace current provisions within the charging system for temporary residential accommodation. If a person is firstly considered temporary, the property is disregarded (schedule 4 para 1 of the 1992 Regulations). Once the stay has been confirmed as permanent then the property will be disregarded under the new provisions for a further 12 weeks.

b) The disregard is for 12 weeks from the moment that **permanent** admission to residential accommodation commences. This may follow a temporary stay.

c) The local authority will determine if a person is eligible for the disregard. People will be eligible if:

- They entered or commenced permanent accommodation on or after 9 April 2001; and
- After assessment the local authority confirms that an applicant is in need of permanent residential accommodation and takes over the arrangements for it.

d) A resident is entitled to the 12 week disregard irrespective of the amount of his remaining assets after the value of his property has been disregarded from the financial assessment. However, a resident may still be required to contribute towards his care home fees from his remaining capital if it exceeds the lower capital limit of £11,500. The contribution made by the resident towards these costs will be calculated according to the residential care charging financial assessment.

e) The disregard is not available to people who entered any form of permanent residential accommodation prior to 9 April 2001, and have remained in permanent residential accommodation.

f) It can be claimed from the local authority up to 12 weeks following admission to permanent residential care. Local authorities should make their assessment of applications without undue delay. However, delays on the part of the local authority that go beyond 12 weeks following permanent admission do not affect a resident's entitlement to the disregard. If the application is successful, the 12 week disregard applies from the date of permanent admission, not the date of the claim.

g) If people sell their homes within 12 weeks, the disregard ceases to have effect from the date of the sale.

h) Where a person leaves residential care (where they have been living on a permanent basis), before the end of the 12 weeks and then re-enters on a permanent basis within 52 weeks they will be entitled to the remaining balance of the 12-week disregard. If a resident leaves permanent care and then re-enters more than 52 weeks later, they will qualify for the disregard again.

### **Action Required to Implement Disregard**

#### **4. Local authorities should:**

a. Make detailed information about the disregard available to people who are considering, entering or commencing permanent stays in residential accommodation.

b. Take account of the 12-week property disregard when making assessments and financial assessments for permanent residential accommodation. If eligible, apply Charging for Residential Accommodation Guidance to residents' income and other assets.

c. Consider 12-week contracts with care homes to cover the 12 week property disregard. The local authority should consider contractual terms which enables contracts for the 12 week property disregard to be terminated before the end of the 12 weeks on the earlier sale of the resident's property. At the end of the 12 weeks, local authorities will need to consider whether the value of residents' assets (including property) mean they no longer need local authority support other than their assessed entitlement to free personal and or nursing care. (Of course, local authorities will continue to support and maintain contracts for those residents who, although they pay the full costs of their care, lack the capacity to make their own arrangements).

d. Ensure that admissions to residential accommodation are deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such neither local authority nor residents' resources should play a part in the decision.

e. Bear in mind that if people are admitted to residential accommodation on the basis that they will return home or where there is uncertainty over the permanence of their admission, they should be deemed "temporary" (in which case the value of their property is automatically disregarded from the financial assessment).

## ANNEX. C

### **Illustrative Examples: Interaction of Regulations on Topping up, Deferred Payments and Free Personal and Nursing Care with Residential Care Charging**

The following examples provide illustrations of the types of calculations local authorities might make when considering requests for topping up or deferred payment agreements for care home places. These examples are for illustrative purposes only. Guidance notes are provided after the examples.

#### **Top up payments**

**Example 1. A single man, aged 85 and in poor health, is assessed as requiring nursing care within a care home. The LA would normally pay £400 per week for his care.**

**Capital His home is valued at £80,000. He has other assets worth £16,500.**

**Income He has an income of £150 p.w. (including pension and benefits).**

**He wishes to make additional top up payments towards a more expensive care home place, costing £500 p.w. He does not wish to enter into a deferred payment agreement.**

First 12 weeks of care. Property disregarded from the financial assessment. Assessed capital now below upper limit of £18,500.

Resident would pay £152.50 p.w. towards normal fees (£150 + £20 tariff income<sup>1</sup> - £17.50 PEA) plus £100 p.w top up.

Resident's total contribution: £252.50 p.w.

LA would pay £247.50 p.w. (£400-£152.50) towards normal fees. This includes payments for FP&NC.

After 12 weeks. Property included in the financial assessment. Capital now over the upper limit.

LA would pay £210 p.w. (FP&NC).

Resident would pay £290 p.w. (£190 normal fees and £100 top up).

#### **Assessment of sustainability of top up arrangement**

The resident is in poor health at the time of the assessment.

Resident's contribution from capital and income, including £100 top up: £290 p.w.

Resident's contribution from his capital only would be £157.50 p.w. (£290 - (£150 - £17.50)).

Resident's annual contribution from his capital: £8,190 (£157.50 x 52)

Resident's total capital on entering care home: £96,500 (£80,000 + £16,500).

Capital available for making top up payments: £78,000<sup>2</sup> (£96,500 - £18,500)

Projected duration of the resident's capital: approximately 9.5 years: (£78,000 ÷ £8,190).

In the local authority's opinion, the proposed top-up is sustainable and the topping up arrangement is agreed.

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<sup>1</sup> Calculated as per guidance note 4.

<sup>2</sup> See guidance note 8.

**Example 2. A married woman, aged 60 with a disability, is assessed as requiring nursing care within a care home. The LA would normally pay £400 per week for her care.**

<b>Capital</b>	<b>Her assessed personal assets, excluding her share of the marital home, are below £11,500.</b>
<b>Income</b>	<b>She has assessed income of £100 per week (including pension and benefits).</b>

**A third party wishes to make additional top up payments on the resident's behalf towards the funding of a more expensive care home place, with fees of £450 p.w.**

The woman's home is not included in the financial assessment since her husband continues to live there. Assessed capital below £11,500.

Resident would pay £82.50 p.w. (£100-£17.50 PEA).

The top up of £50 p.w. made by the third party may be added to the resident's contribution or paid direct to the home. Amount paid by the resident and third party: £132.50 p.w. (£82.50 +£50)

LA would pay £317.50 p.w. (£400-£82.50) towards the normal fees. This incorporates the woman's entitlement to free nursing care.

#### Assessment of sustainability of top up arrangement.

Despite her disability, the woman is in good health at the time of the financial assessment.

The LA does not have details of the third party's financial resources. In order to avoid the woman having to change care homes should the topping up arrangement end, the LA has requested and received a written undertaking that the third party will continue to make the payments for the duration of the woman's time in the home.

In the local authority's opinion, the proposed top up is sustainable and the topping up arrangement is agreed.

**Example 3.** A widowed woman, aged 70 and in moderate health, is assessed as requiring free personal care, but not nursing care, in a care home. The LA would normally pay £300 per week for her care.

**Capital** She owns her own home worth £60,000 and has no debts secured against it. She has no other capital or debts.

**Income** She has a weekly income of £100 (including pension and benefits).

**She wishes to top up her contribution towards her care home fees in order to fund a more expensive care home place, with fees of £350 p.w. She does not wish to enter into a deferred payment agreement. In owning no other capital, she will need to fund her top up payments from the capital raised on the sale of her house.**

First 12 weeks of care. Property disregarded from the financial assessment. Assessed capital now below £11,500.

Resident would pay £82.50 p.w. (£100-£17.50 PEA) towards normal costs.

LA would pay £217.50 p.w. (£300-£82.50), which includes payments for FPC.

Unless the authority is willing to assist her on an interim basis, the resident will need to organise other means of funding the additional £50 top up until her home is sold.

After 12 weeks. Property is included in the financial assessment. Assessed capital would be £60,000.

Local authority would pay £145 p.w. (FPC)

Resident would pay £205 p.w. (£155 normal costs and £50 top up).

Assessment of sustainability of top up arrangement.

Resident's contribution from capital and income, including £50 p.w. top up: £205 p.w.

Resident's contribution from capital would be £122.50 p.w. (£205 - £82.50)

Resident's annual contribution from capital: £6370 (£122.50 x 52)

Resident's total capital on entering the care home: £60,000.

Capital available for making top up payments: £41,500 (£60,000 - £18,500)

Projected duration of the resident's capital: approximately 6.5 years (£41,500 ÷ £6370).

The resident is relatively young and in fair health at the time of assessment. It is possible that she might require care after her capital has been exhausted. Top up agreement approved once a third party provides a written guarantee that they are able and willing to continue the top ups when the resident's capital is spent.

**Example 4.** A single man, aged 65 and in moderate health, is assessed as requiring personal care, but not nursing care, in a care home. The LA would normally pay £300 per week for his care.

**Capital** His home is valued at £30,000. He has other assets worth £4,000.

**Income** He has an income of £100 per week (including pension and benefits).

**He wishes to make additional top up payments towards a more expensive care home place, costing £400 p.w. He does not wish to enter into a deferred payment agreement.**

First 12 weeks of care. Property disregarded from the financial assessment. Assessed capital now below £11,500.

Resident would pay £82.50 p.w. (£100-£17.50(PEA)) towards the normal costs.

LA would pay £217.50 p.w. (£300-£82.50). This includes payment for FPC.

If the top up arrangement is agreed, the resident would be required to fund the additional £100 p.w. from his other assets.

After 12 weeks. Property included in the financial assessment. Assessed capital now over the upper limit.

LA would pay £145 p.w. (FPC). If top up agreement is approved, resident would pay £255 p.w. (£155 normal costs and £100 top up).

#### Assessment of sustainability of top up arrangement.

The resident is a relatively young man in moderate health at the time of the assessment.

Resident's contribution from capital and income, including £100 p.w. top up: £255 p.w.

Resident's contribution from his capital only would be £172.50 p.w. (£255-£82.50)

Resident's annual contribution from his capital: £8,970 (£172.50 x 52).

Resident's total capital on entering the care home: £34,000 (£30,000 +£4,000)

Capital available for making top up payments: £15,500 (£34,000 - £18,500)

Projected duration to the resident's capital: approximately 1.7 years (£15,500 ÷ £8,970).

In the local authority's opinion, the proposed top up cannot be sustained. The topping up arrangement is refused.

## Deferred Payments

<b>Example</b>	<b>A single man, aged 70, is assessed as requiring personal and nursing care within a care home with fees of £400 per week, which is what the local authority would normally expect to pay for someone with his care needs.</b>
<b>Capital</b>	<b>He owns his own home worth £50,000 and has no debts secured against it. He has no other capital or debts.</b>
<b>Income</b>	<b>He has an income of £100 per week (including pension and benefits).</b>

### **1) He wishes to defer part of his contribution towards the normal fees.<sup>3</sup>**

First 12 weeks of care. Property disregarded from the financial assessment so no deferred payment agreement. Assessed capital now below £11,500.

Resident pays £82.50 p.w. (£100-£17.50(PEA)).

LA pays £317.50 p.w. (£400-£82.50), which includes payments for FP&NC.

After 12 weeks. Property is included in the financial assessment. Assessed capital now £50,000.

LA pays £210 p.w. (FP&NC).

Resident's contribution is therefore £190 p.w. (£400-£210).

Under the deferred payment agreement, the resident pays: £82.50 p.w. (£100-£17.50 PEA) from his income. Amount to be deferred: £107.50 p.w. (£190-£82.50)

LA pays £317.50 p.w. on resident's behalf. This includes payment for FP&NC and the resident's deferred contribution (£210 + £107.50).

### **2) He wishes to defer part of his contribution towards the normal fees and an additional top up payment towards a more expensive care home place costing £450 p.w.**

First 12 weeks of care. Property disregarded from the financial assessment. Assessed capital below £11,500. Resident pays £82.50 p.w. (£100-£17.50).

Top up payments of £50 p.w. commencing from the first day of care, are deferred.

LA pays £367.50 p.w. (£317.50 towards the normal fees and £50 top up)

After 12 weeks. Property is included in the financial assessment. Assessed capital now £50,000.

LA pays £210 p.w. (FP&NC). Resident's assessed contribution is £240 p.w. (£450-£210)

Under the deferred payment agreement, the resident pays: £82.50 p.w. (£100-£17.50 PEA) from his income.

Amount to be deferred: £157.50 p.w. (£240-£82.50). This includes £107.50 towards normal fees and £50 top up.

LA makes payment of £367.50 p.w. on the resident's behalf. (£210+£157.50) This includes FP&NC plus the resident's deferred contribution towards the normal fees and the top up payment.

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<sup>3</sup> See guidance note on deferred payment agreements

## Notes

### Care charging rules

1. These examples assume a weekly payment of £145 for personal care and £65 for nursing care. (FP&NC)
2. For remaining costs, the residential care financial assessment generally requires a person to contribute all their income, including any benefit and pension income, plus any 'tariff income' (see below) but minus the Personal Expenses Allowance (PEA) of £17.50 p.w.
3. The upper capital limit of the residential care charging means test is £18,500 and the lower limit is £11,500.
4. 'Tariff income' – the sliding scale contribution from capital between £11,500 and £18,500 is £1p.w. for every £250 or part thereof over £11,500.

### Top Up Payments

5. 'Normal fees' - a resident's contribution to care costs (excluding any top up) under the residential care financial assessment from income and assets, including his home.
6. Top up payments - allow a resident, or a third party acting on a resident's behalf, to pay for more expensive care costs than the local authority would normally pay for a resident's assessed care needs.
7. Assessing the sustainability of possible topping up arrangements. In order to avoid topping up arrangements that cannot be sustained, the L.A must satisfy itself that the resident and/or third party are willing and able to finance the top up for the duration of the resident's time in the home. Failure to maintain top up payments may mean that the resident has to move to a less expensive care home.
8. The resident's capital, age, health and prognosis, if relevant, should be considered within this assessment. Top up payments may only be made from those resources specified in, Circular CCD6/2002, including certain disregarded income and capital and capital over £18,500.
9. In the case of top ups being paid under a deferred payment agreement, the authority should first satisfy itself that the top up payments are viable and recoverable when the property is sold.

### Deferred payment agreements

10. Deferred payment agreements enable some people requiring residential care to defer selling their homes in order to pay for that care. Such agreements enable a local authority to pay part of a resident's contribution towards his or her care home fees and ultimately recover the money from the resident's estate (or from the resident if he or she decides to make a full repayment during his or her lifetime).
11. Authorities will also want to consider possible fluctuations in care home fees and property prices when assessing the viability of a topping up arrangement funded through a deferred payment agreement.

### Attendance Allowance and Disability Living Allowance

12. In the interests of simplicity, AA and DLA have been disregarded from the following examples. However, eligibility for these benefits will cease within 4 weeks of receiving LA support with care home fees.

## **ANNEX D**

### **House of Lords Ruling in the case of Robertson v Fife Council 25 July 2002.**

<http://www.publications.parliament.uk/pa/ld200102/ldjudgmt/jd020725/robert-1.htm>

1. The Scottish Executive endorses the recent guidance issued by COSLA to local authorities on their responsibility to provide care as a result of the House of Lords ruling in the case of Robertson v Fife Council, which describes the effect of the judgement as:

“requiring local authorities to make arrangements for residential care for any person whose care assessment indicates it is required regardless of their ability to pay. Residents will still be required to undergo financial assessment and will be liable to reimburse the Council for the board charges if they are assessed as being able to do so in terms of the National Assistance (Assessment of Resources) Regulations 1992.”

2. The Executive also endorses COSLA’S advice that “there is no change to the rules for assessing notional capital” as a result of the judgement.

## ANNEX E

### NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2003

1. From 14 October 2002, the Department of Work and Pensions introduced changes to the way in which payments of arrears of specified benefits and related concessionary payments, which are held as capital, are treated for the purposes of Income Support. From that date, lump sum payments of arrears of £5,000 or over are disregarded for either 52 weeks or the duration of the benefit claim, whichever is longer.
2. The National Assistance (Assessment of Resources) Regulations 1992, which provide the framework for local authorities to charge for care home fees, are linked directly to Income Support Regulations and have, therefore, automatically incorporated the new arrangements for disregarding arrears of specified benefits and related concessionary payments from 14 October 2002.
3. From 28 February 2003, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2003 reinstate the pre-14 October arrangements for Scottish charging rules, whereby arrears of specified benefits and related concessionary payments are disregarded from the financial assessment for 52 weeks only.
4. Payments of such arrears of arrears of £5,000 or over in the interim period between 14 October 2002 and 28 February 2003, should be treated in accordance with the provisions indicated by Income Support Regulations. Such payments should therefore be disregarded from the financial assessment for either 52 weeks or the duration of the benefit claim, whichever is longer.

## **ANNEX F**

### **Disregard of Statutory Paternity / Adoption Pay**

1. Following the green paper 'Work and Parents: Competitiveness and Choice', the Department of Trade and Industry (DTI) introduced measures in the Employment Act 2002 to give new fathers and adoptive parents the right to statutory payments from their employers to help them take time off work following the arrival of a new child. The period for statutory maternity pay is also to be extended for up to 26 weeks. These new provisions are intended to take effect from 6 April 2003.

2. From November 2002, DWP introduced changes to the Income Support Regulations so that income tax, N.I. contributions and half of any contributions to occupational or personal pensions, in respect of statutory paternity and adoption payments, are disregarded for the purposes of Income Support. The National Assistance (Assessment of Resources) Regulations 1992 for residential care charges are directly linked to IS regulations and have therefore automatically been changed to reflect the new arrangements. In practice, the numbers of residents affected by

# **CHARGING FOR RESIDENTIAL ACCOMMODATION GUIDANCE**

**FEBRUARY 2003**

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**fees**

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## SECTION 1 - INTRODUCTION

### About this guidance

#### Format

- 1.001 Where a paragraph in this guidance is directly linked to a section of the Act or a regulation, the relevant section or regulation is shown immediately following the text of the paragraph. **Section** refers to a section of the National Assistance Act 1948 except where otherwise stated. **Reg** refers to a regulation of the National Assistance (Assessment of Resources) Regulations 1992. **Schedule** refers to a schedule to the National Assistance (Assessment of Resources) Regulations 1992.

#### Gender

- 1.002 In all paragraphs the words "he" or "his" should be taken as also referring to "she" or "hers". The male form has been used purely for ease of writing and reading.

### General

#### Statutory basis

- 1.003 Section 87(3) of the Social Work (Scotland) Act 1968 provides that accommodation provided under the 1968 Act and Section 7 of the Mental Health (Scotland) Act 1984 shall, for charging purposes, be regarded as provided under Part III of the National Assistance Act 1948. The charging provisions of the 1948 Act apply, by virtue of Section 65(f) as amended by the NHS and Community Care Act 1990 to all residential accommodation provided under the 1968 Act, and not just under Part IV, as well as Section 7 of the Mental Health (Scotland) Act 1984.
- 1.004 Where a person is provided with accommodation under Part III of the National Assistance Act, Section 22 of that Act provides for him to be charged for the accommodation.
- Section 22(1)
- 1.005 Section 22 requires the local authority to set a standard charge for the accommodation. If a resident is unable to pay the standard charge, the local authority must assess their ability to pay and decide what lower amount should be charged.

Section 22(3)

#### Standard rate

- 1.006 Section 22 requires local authorities to set the standard rate for local authority homes at an amount equivalent to the full cost to the authority of providing the accommodation.

Section 22(2)

- 1.007 The standard rate for accommodation in homes not managed by the local authority will be the gross cost to the local authority of providing or purchasing the accommodation under a contract with the independent sector home.
- Section 26(2)

### **Arrangements for accommodation**

- 1.007A Where a local authority are considering whether to make arrangements for residential accommodation under the Social Work (Scotland) Act 1968 or Section 7 of the Mental Health (Scotland) Act 1984, section 12(3 A) of the 1968 Act requires the authority to disregard the person's capital up to the prescribed capital limit (see paragraph 6.003). Where a local authority need too calculate a person's capital for the purposes of section 12(3A) of the 1968 Act, his capital shall be calculated in the same way as if he were a person for whom accommodation is **proposed** to be provided.

Section 12(3A) and (13B) of the Social Work (Scotland) Act 1968

### **Assessing ability to pay**

#### Regulations

- 1.008 Where a resident (ie a person who is provided, or proposed to be provided, with accommodation under Part III) is unable to pay either the standard rate or the actual cost incurred by the local authority, the local authority must assess his ability to pay using regulations made for that purpose. These are the **The National Assistance (Assessment of Resources) Regulations 1992**.
- Section 22(5)

#### Local authority managed home

- 1.009 In local authority managed homes, the authority must charge the full cost of providing the accommodation - the "standard rate". Where the local authority is satisfied that a resident is unable to pay the standard rate, it must assess his or her ability to pay and, on the basis of that assessment, decide the lower amount which should be paid.
- Section 22(3)

#### Independent homes

- 1.010 A contract made with an independent home must include arrangements for the local authority to pay the home for the accommodation, as well as specifying an amount to be paid. The local authority must then ask the resident to refund that amount to the authority. Where the resident satisfies the local authority that he is unable to make a full refund, the local authority must assess his ability to pay in the same way as a person in a local authority managed home, and decide the lower amount to be refunded. (See 1.015 and 1.016 for collection of charges).

Sections 26(2) and 26(3)

Housing associations registered with a local authority

- 1.011 In the case of a housing association establishment registered with a social work department, in determining their share of the costs local authorities should have regard to whether the home is in receipt of any Special Needs Allowance Package (SNAP) from Scottish Homes in respect of the resident's place. If so then the local authority's share of the cost should be net of any costs met by SNAP.

Residents with a dependent child

- 1.012 Local authorities should continue to apply Section 22(7) of the National Assistance Act in terms of Section 87(3) and (4) of the Social Work (Scotland) Act 1968 with regard to an adult accompanied by a child. This provision remains extant in Scotland alone following the coming into force in England and Wales of paragraph 11 of Schedule 13 to the Children Act 1989 which amended Section 21 of the 1948 Act and consequently repealed Section 22(7) of the 1948 Act in its application to England and Wales. Local authorities should therefore consider using the powers in Section 22(4) of the 1948 Act to vary the amount of personal expenses allowance needed by the resident to reflect the needs of the dependent child.

**Free Personal and Nursing Care**

- 1.012A The Community Care and Health (Scotland) Act 2002 requires that personal and nursing care and services which provide personal support shall not normally be charged for, and sets out specific types of care for which no charge will be made.**

**Eligibility to Free Personal and Nursing Care**

- 1.012B A free personal care contribution of £145 is payable for people aged 65 and over, rising to £210 where nursing care is also required. A free nursing care contribution of £65 is payable for care home residents of all ages. People entering a care home after 31 March 2002 will be required to undergo a care needs assessment to confirm eligibility for these payments. However, people already in a care home on 31 March 2002 will not be required to undergo an additional care needs assessment.**

**The Community Care (Disregard of Resources) (Scotland) Order 2002 No.264. (article 2 (1))**

- 1.012C These rules on free personal and nursing care payments for people in care homes only affect people who would otherwise be receiving support less than the above mentioned amounts from the local authority. In such cases, people are eligible to have that contribution made up to the above amounts. The rules for free personal and nursing care are explained in full in community care circulars: Free Personal and Nursing Care in Scotland, CCD 4/2002 and Free Personal and Nursing Care Route 2 Contract: Guidance, CCD 5/2002**

### Information to be given to the resident

- 1.013 The local authority must ensure that the resident is given a clear explanation, usually in writing, of how the assessment of his ability to pay has been carried out. This should explain the usual weekly assessed charge. They should also inform the resident of the reasons why the charge may fluctuate, particularly where a new resident's charge may vary in the first few weeks of admission because, for instance, of the effect of benefit paydays on Income Support or the withdrawal of Attendance Allowance or Disability Living Allowance (care component). The resident should, however, be informed of why the charge may fluctuate. There is also no requirement to specify the assessed charge in the contract with the home.

### Residents unable to handle their own affairs

- 1.014 There will be occasions where a resident is unable to provide the local authority with the information needed to assess the charge because they are generally unable to handle their own affairs. In these cases the local authority should find out if anyone has a Power of Attorney or any other dealings with the resident's affairs (eg someone who has been given appointeeship by the Department for Work and Pensions for the purpose of Benefit payments).

### Collecting charges from residents in independent homes

#### Resident to pay the charges direct to the home

- 1.015 Normally, residents will pay their assessed charge direct to the local authority. However, Section 26(3A) of the National Assistance Act 1948 provides for an exception to this rule for residents placed by local authorities in independent sector homes: where the resident, the local authority, and the organisation or person managing the premises **all** agree, the resident may pay direct to the home the amount that he or she would otherwise pay to the local authority. This will leave the local authority responsible for paying the home the remainder of the cost. (Section 26(3A) was inserted into the 1948 Act by Section 42(4) of the National Health Service and Community Care Act 1990, which provision extends to Scotland).

#### Liability for payment to the home

- 1.016 This exception to the normal rule is an administrative easement which will be particularly useful where the resident and home provider wish to maintain a tenant-landlord relationship, for example where the premises are provided by a housing association. **However**, authorities should note that they remain responsible for the full amount should the resident fail to pay the home as agreed. In such a case **the authority** will recover the charge from the resident in the normal way.

Section 26(3A)(a)

## Treatment of fractions in assessment

- 1.017 When any calculation in the assessment results in a fraction of a penny, round up if that would be in the resident's favour, otherwise round down.

Reg 4

## Charges for Day Care Services

- 1.017A Residents should not be charged extra for daytime activities which have been negotiated as part of the residential care package, as the cost of these services would already be included in the standard charge agreed by the LA for that package. Where a separate package of services has been arranged by the LA for a resident then the LA can consider whether to charge the resident extra for these services (using the discretionary charging powers for non-residential services). As the resident may only have their PEA and any disregarded income available, the amount charged (if any) is likely to be minimal.

## Social Security Benefits

### Local authority managed homes

- 1.018 People in residential accommodation which is managed or provided by a local authority are entitled to Income Support/ **Minimum Income Guarantee** at an amount equivalent to the basic State Retirement Pension. People in this accommodation who receive at least the basic pension are not entitled to Income Support. **This only applies to residents claiming Income Support/ Minimum Income Guarantee before 8 April 2002.**
- 1.019 People in residential accommodation which is managed or provided by a local authority but which does not include board are entitled to Income Support/ **Minimum Income Guarantee** as if they were living in their own home and may claim Housing Benefit.

### Independent homes

- 1.020 People **who entered** registered independent care homes **prior to 8 April 2002** are entitled to Income Support **or Minimum Income Guarantee** at the same rate as if they were living in their own homes, plus a residential allowance. They are not entitled to Housing Benefit.
- 1.020A People entering registered independent care and homes **from 8 April 2002** will get normal Income Support or Minimum Income Guarantee allowances and premiums at the same rate as if they were living in their own homes. Residential Allowance monies have transferred to local authorities to enable them to be more flexible in the provision of care and new clients should be no worse off financially.
- 1.021 People in unregistered residential accommodation are entitled to Income Support/ **Minimum Income Guarantee** at the same rate as if they were living in their own homes. They may claim Housing Benefit.

Attendance Allowance/Disability Living Allowance (Care Component)

- 1.021A See Annex D for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care Component).

Admission to Hospital

- 1.022 When a resident is admitted to hospital, his Social Security benefits will be reduced after a period. See Annex E for details.

**Preserved Rights**

- 1.023 From 8 April 2002 the responsibility for assessing and funding people given 'preserved rights' in April 1993 under the NHS Health and Community Care Act 1990 was transferred from the Department for Work and Pensions to local authorities. Section 50(1) (b) of the Health and Social Care Act 2001 repealed Section 86A of the Social Work (Scotland) Act 1968 which gave authorities the power to make residential accommodation arrangements for specific categories of people with 'preserved rights'. Now the charging regulations and rules in this guidance will apply to all existing 'preserved rights' cases in residential accommodation who are also in receipt of Income Support.

**Liaison with Department for Work and Pensions/ Jobcentre Plus/ Pension Centres**

- 1.024 It is important that local authorities maintain good liaison arrangements with the **Jobcentre Plus/ Pension Centre** Local Offices as in some aspects of the assessment, the local authority, if they have not been able to obtain necessary information from the resident or another source, may need to contact the **Jobcentre Plus/ Pension Centre** Local Office. (See Circular SWSG 8/93)

## **Complaints**

- 1.025 Complaints about the level of charge levied by a Local Authority are subject to the usual LA complaints procedures outlined in the Social Work Services Group Circular SW15/1996, "Complaints Procedures", issued in March 1996 and in the practice Guidance, "A Right to Complain" issued in August 1991.

## SECTION 2 - LESS DEPENDENT RESIDENTS

### Background

- 2.001 Before April 1993, local authorities in Scotland arranging accommodation for less dependent residents were required to assess their ability to pay under the terms of the 1948 Act and levy a charge for their accommodation. For those requiring public assistance to meet the minimum charge local authorities nevertheless had powers to vary the amount of personal expenses allowance in order to provide such people with sufficient money in order to encourage them to live as independently as possible.
- 2.002 Under the terms of the National Assistance (Assessment of Resources) Regulations 1992 while an assessment of ability to pay must still be carried out if a resident cannot pay the full charge local authorities will have discretion not to apply Parts II to V of the regulations relating to treatment of income, treatment of capital, liable relatives and students if appropriate. It will however, still be open to local authorities to vary the amount of personal expenses allowance if authorities prefer to augment a resident's personal income in that way.

### Identifying "less dependent" residents

- 2.003 For the purposes of the charging rules a "less dependent" resident is a person who lives in:
- a) private or voluntary sector accommodation which is not registered as a care home, or
  - b) local authority accommodation that does not provide board.

Reg 2(1)

#### Definition of "board"

- 2.004 In 2.003 above, "board" means at least some cooked or prepared meals, cooked or prepared by someone other than the resident (or a member of his family) and eaten in the accommodation, where the cost of the meals is included in the standard rate fixed for the accommodation.

Reg 2

### Assessing "less dependent" residents

- 2.005 It is up to the local authority how much it chooses to disregard of the resources of a person who is "less dependent". Factors to be taken into account include:
- the resident's commitments, ie to what extent is he incurring costs directly for necessities such as food, fuel and clothing
  - the degree of the resident's independence, ie to what extent should he be encouraged to take on expenditure commitments

- whether he needs a greater incentive to become more independent, eg he may be encouraged to take on paid employment if most or all of his earnings are disregarded.

Reg 5

2.006 Where a resident is in local authority accommodation which does not provide board, or in independent sector accommodation which is not required to register the capital limits for Income Support and Housing Benefit will be £10,000 and £16,000.

## SECTION 3 - TEMPORARY RESIDENTS

### Who is a temporary resident?

3.001 The definition of temporary resident allows the local authority to regard a person's stay as temporary if it is likely to last for any period not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks.

Reg 2(1)

3.001A An admission is temporary either if the agreed intention is for it to last for a limited time period, such as respite, or there is uncertainty that permanent admission is required. An admission is permanent if the agreed intention is for the resident to remain in residential care.

3.002 In deciding whether to treat a resident as temporary, it will be helpful to find out whether:

a) he receives Income Support/**Minimum Income Guarantee** which includes an amount in respect of home commitments; and/or

b) Housing Benefit continues to be paid in respect of his home address.

Local authorities should note, however, that Income Support/**Minimum Income Guarantee** Housing Costs and Housing Benefit may only be payable for 13 weeks in some circumstances (see Circular SWSG 13/95 paragraphs 8 to 11).

3.003 Where a temporary resident has a partner their resources cannot be jointly assessed (see Section 4).

3.004 It must be recognised that a stay, which was initially expected to be permanent, may turn out to be temporary (eg the resident's condition improves dramatically when it was not expected to do so). In such cases, it would be unreasonable to continue to apply to that resident any rules which would have affected him as a permanent resident (eg treatment of the former dwelling, in particular the placing of a charge on the resident's interest in the property).

3.004A It must also be recognised that a stay, which was initially expected to be temporary, may turn out to be permanent. In such cases, it would be unreasonable to assess the resident's charge as if he was a permanent resident from the outset (eg take into account AA/DLA) as these resources may no longer be available to the resident. Assessment as a permanent resident should, therefore, begin from the date it is agreed that the stay is to become permanent.

### Charging for temporary stay

#### Up to 8 weeks

3.005 An assessment of ability to pay is not required for the first 8 weeks of a temporary stay. It will be for the local authority to decide in each case whether to make an

assessment. Where the local authority decides it is appropriate to make an assessment, follow the guidance in Sections 4 to 13. Where no assessment is made, the charge is the amount it appears reasonable to the local authority for the resident to pay.

Section 22(5A)

After 8 weeks

- 3.006 After 8 weeks, the local authority must charge the resident at the standard rate for the accommodation and carry out an assessment of his ability to pay.

**Income Support/ Minimum Income Guarantee for temporary residents**

- 3.006A Where a resident enters residential accommodation for a temporary period Income Support/**Minimum Income Guarantee** is not payable if his capital exceeds £8,000 (£12,000 if over 60). This may mean that, where the resident has capital of above £8,000 (£12,000 if over 60) but not more than £18,500, the resident's contribution towards the cost of his or her accommodation will not include any Income Support/**Minimum Income Guarantee**.

**Assessing ability to pay**

- 3.007 If the local authority decide to make an assessment straight away, or from the eighth week, his ability to pay should be assessed in accordance with the following paragraphs.

Capital

- 3.008 Disregard the dwelling normally occupied as the resident's home where:
- a. the resident intends to return to occupy that dwelling and that the dwelling is still available to him; **or**
  - b. he is taking reasonable steps to dispose of the property in order to acquire another more suitable home for him to return to.

Schedule 4 para 1

For all other capital assets, follow the guidance in Section 6.

Income

- 3.009 If Income Support/**Minimum Income Guarantee** is in payment, check, from the resident's notice of award of Income Support/ **Minimum Income Guarantee**, whether the benefit includes an amount in respect of housing costs. If it does, disregard the amount allowed. Income Support/ **Minimum Income Guarantee** may be paid for home commitments for up to 52 weeks on admission to residential accommodation.

Schedule 3, para 26

- 3.010 If Housing Benefit is in payment in respect of the home address, disregard the amount of Housing Benefit in full.  
Schedule 3, para 3
- 3.011 Income Support/ **Minimum Income Guarantee** and Housing Benefit may not meet the full cost of continuing home commitments. Where there are extra costs, disregard such additional amount as appears reasonable. Extra costs might be:
- a fixed heating charge;
  - water rates;
  - mortgage payment or rent not met by IS/ **Minimum Income Guarantee**/HB;
  - insurance premiums;
  - service charges not met by IS/ **Minimum Income Guarantee**/HB  
Schedule 3, para 27
- 3.012 Where neither Income Support/ **Minimum Income Guarantee** nor Housing Benefit are in payment in respect of the home address, assess the resident's income in accordance with Sections 8 and 9, and then disregard from the total such amount as appears reasonable to allow in respect of home commitments. Such expenses might be:
- interest charges on:
    - hire purchase agreement to buy the dwelling occupied as the home (eg a caravan)
    - loans for repairs or improvements to the dwelling
  - mortgage payments
  - ground rent or other rental relating to a long tenancy
  - service charges (eg regular charge payable to the management company of a block of flats)
  - any insurance premiums
  - standard charges for fuel
  - water rates
  - payments under:

- co-ownership scheme
- tenancy agreement or licence of a Crown tenant

Schedule 3 para 27

A disregard on income to meet these expenses should also be allowed if the resident is taking reasonable steps to dispose of the property in order to acquire another more suitable home to which he will return.

Schedule 3 para 27

### Couples

- 3.013 Where one or both members of a couple are temporarily in residential accommodation see **Section 4** for their assessment.

### **Attendance Allowance (AA)/Disability Living Allowance (DLA) Care Component**

- 3.014 Where the resident is a temporary resident, AA or DLA Care Component should be completely ignored - but remember that either benefit will be withdrawn after 4 weeks if the resident is relying on public support. These rules also cover Constant Attendance Allowance and Exceptionally Severe Disability Allowance payable with Industrial Injuries Disablement Benefit or War Disablement Pension.

Schedule 3 para 6

## SECTION 4 - COUPLES

### Local authority treatment of couples

- 4.001 Under the National Assistance Act 1948, the local authority has no power to assess a couple according to their joint resources. Each person entering residential care should be assessed according to their individual means, although the liability of a married person to maintain their spouse (see Section 11) should be considered in each case.
- 4.002 Similarly, the local authority has no powers to use the assessment regulations as a basis for assessing how much a liable spouse should be able to contribute towards the cost of the residential accommodation.
- 4.003 Where a resident is the main recipient of the couple's income, the local authority charge could result in a substantial reduction in income remaining for the spouse at home. In such cases it may be appropriate for the local authority to consider increasing the resident's personal expenses allowance, as described in Section 5, in order to leave enough for them to continue to support their partner at home. The use of this discretion should be considered and negotiated in the light of the individual circumstances of each case, but it would be reasonable for the local authority to take into account factors such as the usual standard of living of the spouse at home, and if the spouse has higher than average outgoings for whatever reason. However, the weight to be attached to these considerations will be for the authorities themselves to determine.

### Capital limits for couples

- 4.003A Where a resident is one of a couple (irrespective of whether the resident's stay is permanent or temporary, or whether the other member of the couple is also a resident or remains in the former home) the resident must have in excess of £18,500 capital in his own right, or his share of jointly owned capital must be in excess of £18,500 before he is excluded from support on the grounds of capital.

### Temporary residents

- 4.004 Where a member, or both members, of a married couple are admitted to residential accommodation on a temporary basis their ability to contribute towards the charge should be assessed individually according to Section 3. In every case, the local authority must assess each resident separately. Disregard any Income Support/ **Minimum Income Guarantee** awarded in respect of home commitments. Income Support/ **Minimum Income Guarantee** and Housing Benefit may not meet the full cost of continuing home commitments. Where there are extra costs, disregard such additional amount as appears reasonable. Extra costs might include:
- a fixed heating charge;
  - water rates;

- mortgage payments, rent or service charges not met by IS/HB
- insurance premiums

### **Permanent residents**

- 4.005 Where one, or both, members of a couple are admitted permanently to residential accommodation the local authority must assess their ability to contribute towards the charge according to their individual resources following the rules laid down in Sections 5 to 13.
- 4.006 It will be useful to know how Income Support/ **Minimum Income Guarantee** will be calculated in these cases, as this may give a guideline as to how much the spouse remaining at home is likely to be able to contribute towards the charge. Where Income Support/ **Minimum Income Guarantee** is being paid **for a couple** who are married, and so liable to maintain each other under Section 42(1) of the National Assistance Act 1948, it would be reasonable to expect the partner receiving the Income Support/ **Minimum Income Guarantee** to contribute towards the charge for accommodation for the other partner a sum equivalent to the Income Support/ **Minimum Income Guarantee** payable for that partner. If Income Support/ **Minimum Income Guarantee** is paid to the partner in residential accommodation, the full amount will have to be taken into account but the local authority could consider varying the personal expenses allowance as described in Section 5 in order to leave enough for the partner at home to meet their expenses.

### **THE FOLLOWING PARAGRAPHS ARE FOR INFORMATION ONLY AND DETAIL THE TREATMENT OF COUPLES IN LOCAL AUTHORITY HOMES FOR INCOME SUPPORT/ MINIMUM INCOME GUARANTEE**

- 4.007 *While local authorities do not have powers to assess a couple according to their joint resources, this is not the case for Income Support/ **Minimum Income Guarantee**. The treatment of a couple for Income Support/ **Minimum Income Guarantee** will depend on a number of factors and it may be useful to know how their benefit is assessed. This may give an indication of how much the spouse who remains at home is likely to be able to contribute towards the cost of accommodation.*

### ***Temporary Residents***

- 4.008 *Where the couple are temporarily separated as a result of one being admitted to residential accommodation they will still be treated as a couple for Income Support/ **Minimum Income Guarantee** purposes, and the whole amount of Income Support/ **Minimum Income Guarantee** will normally be paid to one partner (generally the partner remaining at home). However, the total amount of Income Support/ **Minimum Income Guarantee** payable to the couple may be calculated by adding together the amounts each partner would receive if they were assessed as single people. This ensures that the total Income Support/ **Minimum Income Guarantee** meets the couple's separate needs.*



***One member of a married couple temporarily in residential accommodation***

- 4.009 Where only one member of a married couple is temporarily in a local authority managed home the **Income Support/ Minimum Income Guarantee** applicable amount for the couple will be the amount laid down in paragraph 10B(1) of Schedule 7 to the **Income Support regulations (the "Part III rate" - see Annex A. This only applies to residents claiming Income Support/ Minimum Income Guarantee before 8 April 2002)** for the resident, and **Income Support** calculated as if he were a single person for the partner at home.
- 4.010 Where one partner is temporarily in an independent home, and the couple are entitled to **Income Support/Minimum Income Guarantee**, the **Income Support/ Minimum Income Guarantee** applicable amount will be the greater of:
- the normal applicable amount for the couple as if they were both still at home
- or**
- the normal applicable amount for the partner remaining at home **plus** the applicable amount for the partner in the residential accommodation as if they were a single person.

***Both partners temporarily in residential accommodation***

- 4.011 Where both partners are temporarily in local authority managed homes, their **Income Support/Minimum Income Guarantee** entitlement will be twice the amount laid down in paragraph 10B(3) of Schedule 7 to the **Income Support regulations (the "Part III rate" - see Annex A)**, plus an amount in respect of home commitments.
- 4.012 Where both partners are in residential care and one is in a local authority managed home and the other in an independent home, the **Income Support/Minimum Income Guarantee** entitlement will be the appropriate amount for each partner as if he were a single person, ie the **Part III rate** for the partner in a local authority managed home, and normal **Income Support/Minimum Income Guarantee** including **Residential Allowance (This only applies to residents claiming Income Support/Minimum Income Guarantee before 8 April 2002)** for the partner in an independent home, plus an amount for continuing home commitments where appropriate.
- 4.013 Where both partners are in different independent homes or the same independent home **IS/Minimum Income Guarantee including Residential Allowance (This only applies to residents claiming Income Support/Minumum Income Guarantee before 8 April 2002)** will be paid in respect of each partner, plus an amount for home commitments where appropriate.

***One partner in residential accommodation or both partners in separate residential accommodation***

4.014 *Where one partner moves permanently to residential accommodation Income Support/Minimum Income Guarantee will be paid as if he were a single person. No account will be taken, in the Income Support assessment, of the resources of the partner remaining at home although the Benefit Agency may look to the partner at home to make a contribution as a liable relative.*

## **INCOME SUPPORT/ MINIMUM INCOME GUARANTEE TREATMENT OF COUPLES**

### ***Both partners in the same residential accommodation***

4.015 *Where both partners are admitted to the same care home, the Jobcentre Plus/ Pension Centre Adjudication Officer will have decided whether to assess them as couple or separately.*

4.016 *A married or unmarried couple who live in the same household are treated as one unit for Income Support/Minimum Income Guarantee assessment purposes, and their resources are "aggregated". This means that all the capital and income resources of the couple, whether jointly owned, **or owned** by one partner or the other, are taken into account in one assessment for the couple.*

4.017 *An important factor in deciding whether to treat two residents as a couple for Income Support/Minimum Income Guarantee purposes is whether they live in the same household. A married couple living in separate homes would not be aggregated because they do not share one household.*

4.018 *Normally, if both partners are living in the same care home they would be considered to be living in the same household. However, there may be exceptions, eg where one partner lives in a one wing and the other in another wing, they might be said to live in separate households.*

4.019 *If the Jobcentre Plus/ Pension Centre Adjudications Officer has decided to aggregate the couple's resources, Income Support/ Minimum Income Guarantee will be paid to one member of the couple taking into account the needs of both partners.*

## **SECTION 5 - PERSONAL EXPENSES ALLOWANCE**

### **Purpose of the personal expenses allowance**

- 5.001 The personal allowance is intended to enable residents to have money to spend as they wish, for example on stationery, personal toiletries, small presents for friends and relatives and other minor items. The residents will normally supply their own clothes but in cases of special need or emergency (eg all clothes are lost in a fire) the local authority may provide replacement clothing. Local authorities are reminded that PEA should not be spent on services that have been contracted for by the council and/or have been assessed as necessary to meet individuals' needs by the council and the NHS, either separately or jointly.

### **Amount of personal expenses allowance**

- 5.002 In assessing a resident's ability to pay for his accommodation, the local authority is required to ensure that he retains an amount for personal expenses. Section 22(4)
- 5.003 The amount allowed in the assessment for personal expenses is laid down each year in the National Assistance (Sums for Personal Expenses) Regulations (see Annex A) and is the same for each resident whether they are in a local authority run home or an independent sector home.
- 5.004 Residents should be left with the full PEA following the financial assessment of their resources.

### **Varying the amount of personal expenses allowance**

- 5.005 Under the Section 22(4) of the National Assistance Act of 1948 local authorities have the power to allow a different amount from that prescribed for personal expenses in special circumstances, for example where:
- someone who does not qualify as a "less dependent" resident solely because he lives in registered private or voluntary sector accommodation or in local authority accommodation where board is provided and therefore cannot be assessed under the rules described in Section 2 but who, nonetheless, needs to retain more of his income in order to help him lead a more independent life.
  - where a person in residential accommodation has a dependant child (see paragraph 1.012), the local authority should consider the needs of the child in setting the personal expenses allowance. This applies whether or not the child has accompanied the person into the accommodation, and will be particularly important where the resident has income which is taken fully into account (see Sections 8 and 9) in the charging assessment (eg Income Support, Child Benefit and Child Support Maintenance Payments where the child is accommodated with the resident under Part III of the National Assistance Act 1948).

- where a person temporarily in residential accommodation receives Income Support including an amount for a partner who remains at home (see 4.006) the local authority should consider the needs of the person at home in setting the personal allowance.
- local authorities are required to ignore half of a resident's occupational pension where the resident is paying half of that pension to a spouse (see 8024A). This disregard does not apply to unmarried couples. Where the person in residential accommodation is the main recipient of an **unmarried** couples' overall income (eg occupational pension), the LA can use their discretion to increase the resident's personal expenses allowance in special circumstances to enable the resident to pass some of that income to the partner remaining at home. In considering this the LA should bear in mind the effects it could have on benefits such as Income Support, Housing Benefit and Council Tax Benefit of increasing the partner's income, as increasing the partner's income in this way may lead to a reduction in benefits resulting in the partner being no better off.
- the 50 per cent disregard mentioned above only relates to occupational pensions. Where a resident's income includes a private pension, or a retirement annuity contract, the local authority may consider using their discretion to increase the resident's PEA to enable the resident to pass some of that income to the spouse or partner remaining at home.

## SECTION 6 - CAPITAL

### What is capital?

6.001 A resident's resources are either capital or income. It may not always be obvious whether a payment should be treated as capital or income, but generally, a payment of capital is one which is:

- a) not in respect of a specified period; and
- b) not intended to form part of a series of payments.

### Types of capital

6.002 Examples of capital are shown in the following list. The list is intended as a guide and is not exhaustive.

- Buildings
- Land
- National Savings Certificates and Ulster Savings Certificates
- Premium Bonds
- Stocks and shares
- Capital held by the Court of Protection or a Receiver appointed by that Court
- Any savings held in:
  - building society accounts - income which is paid into an account becomes capital once the period over which it is taken into account as income expires
  - bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Girobank and Trustees Savings Bank - income which is paid into an account becomes capital once the period over which it is taken into account as income expires
    - SAYE schemes
    - Unit Trusts
    - Co-operative share accounts
    - cash
    - trust funds (see Section 10)

## Effect of capital

### Capital limits

6.003 A resident with capital of more than £18,500 is liable to pay the standard charge for the accommodation, if in a local authority home, or the full amount of the contracted fee if in an independent sector home. If a resident has more than £18,500 there is no need to make a wider assessment of his ability to pay. Where a resident is one of a couple, the resident is liable to pay the standard rate or full contracted fee if they have more than £18,500 in their own right; or if their own capital and their share of jointly held capital is more than £18,500.

Reg 20

6.004 Capital of £11,500 or less is fully disregarded.

6.005 Capital over £11,500 and up to £18,500 is taken into account in full for the purposes of calculating the resident's tariff income from capital unless regulations specify otherwise - (see 6.019 onwards).

### *Tariff income*

6.006 Where a resident has £18,500 or less but more than £11,500, assess the resident's ability to pay in the normal way and take into account, **as weekly income**, £1 for every complete £250 or part of £250 over £11,500. This is called "tariff income".

Reg 28

## A tariff income table is at Annex B

### Examples

1. The resident has £12,130 capital. £11,500 is disregarded and tariff income of £3 is taken into account as income.
2. A resident has £11,550 capital. £11,500 is disregarded and tariff income of £1 is taken into account as income.

**N.B.** Tariff income is meant to represent an amount that a resident with capital over a certain limit should be able to contribute towards his accommodation costs, not the interest earning capacity of that capital.

**6.006A** When a resident who is subject to the 12 weeks property disregard tops up from capital resources between the lower and upper limits, the level of tariff income that applies during those 12 weeks of topping up is the same as it would be if the person were not using capital to top up. (See 8.019B)

## Beneficial Ownership of capital

### Does the resident own the capital?

- 6.007 A capital asset normally belongs to the person in whose name it is held. The following paragraphs provide guidance on how to establish beneficial ownership where there is a dispute.

### Ownership disputed

- 6.008 Where ownership is disputed, ask for written evidence to prove ownership. Where a resident is said to be holding capital for another person, obtain evidence of the arrangement and the origin of the capital, and evidence to show the intentions for its future use and for its return to the rightful owner.

### *Examples*

1. A resident has £12,000 in a building society account in his own name. He says that £3,000 is set aside for his grandson's education. However, there is no deed of trust or other legal arrangement which would prevent the resident using the whole amount for his own purposes. The resident is treated as the beneficial owner of the whole amount.
2. A resident has £5,000 in a bank account in his own name, and shares valued at £6,500. He provides evidence to show that the shares were purchased on behalf of his son, who is abroad, and that they will be transferred to his son when he returns to Britain. Although the resident is the **legal** owner, he is holding the shares in trust for his son, who is the **beneficial** owner. The £5,000 is to be taken into account as the resident's capital.

### Joint Beneficial Ownership of Capital

- 6.009 Where a resident has joint beneficial ownership of capital, unless it is an interest in land (see Section 7), with someone else, divide the total value equally between the joint owners, and treat the resident as owning an equal share. This method of treatment avoids administrative difficulties. Once the resident is in sole possession of his **actual** share, treat him as owning that actual amount.

Reg 27(1)

### *Example*

1. A resident and her daughter have £21,000 in a joint building society account. The resident contributed £8,500 and the resident's daughter, £12,500. Treat the resident as owning £10,500.

The joint account is then closed and the resident and her daughter open separate accounts. The resident has £8,500 in her account. Treat her as owning £8,500.

## Treatment of capital

### Valuation

6.010 The value of a capital asset **other than** National Savings Certificates (see 6.017) is the current market or surrender value, whichever is higher, **less**:

a) 10% of that value if there would be any expenses involved in selling the asset; (this does not apply once the asset has been sold, when the capital to be taken into account is the actual amount realised from the sale) **and**

Reg 23(1)(a)

b) any outstanding debts secured on the asset, eg a mortgage.

Reg 23(1)(b)

6.011 A capital asset may have a current market value (eg stocks and shares) or a surrender value (eg premium bonds). The current market value will be the price a willing buyer would pay a willing seller. The way the market value is obtained will depend on the type of asset held, eg the values of stocks and shares or unit trusts which are quoted in newspapers.

6.012 If the resident and the assessing officer both agree that, after deducting the amounts in paragraph 6.011 (a) and (b) (where appropriate), the total value of the resident's capital will be:

a) more than £18,500; or

b) £11,500 or less

it is not necessary to obtain a precise valuation. If there is any dispute, obtain a precise valuation.

6.013 In the case of land, buildings or a house, where it is necessary to obtain a precise valuation because of a dispute, a professional valuer should be asked to provide a current market valuation. (See Section 7 for the treatment of property).

### Expenses of sale

6.014 The expenses of sale (10%) should be allowed **only** where there will be actual expenses. The expenses must be connected with the actual sale, and not simply the realisation of an asset, eg the cost of fares to withdraw money from a bank are not expenses of sale.

6.015 The deduction is always 10%, even if the actual expenses are more or less than 10%.

Debt secured on asset

- 6.016 "Secured on" means a legal charge or mortgage must be made on the actual capital asset.

*Example*

A resident owns a house and garden (his home), plus an extra piece of land which, although attached to the garden, is not part of it. It has been decided to disregard the value of the resident's former home, but to take into account the value of the extra land because it does not form part of the resident's "home" and could be sold separately. The resident has a mortgage secured on the whole of the property. The value of the land to be taken into account is the market value of that piece of land, less 10% of that value for expenses of sale and **the whole of the mortgage** secured on the home and the extra land.

National Savings Certificates

- 6.017 The value of National Savings Certificates is:
- a) if sale of the issue ceased before the first day of the July immediately before the resident entered residential care, the price they would have realised on that 1st July if they had been purchased on the last day of the issue; and
  - b) in any other case, the purchase price.

Reg 23(2)

**Annex C** sets out the value of each issue.

**Disregards on capital**

- 6.018 Different types of capital will be disregarded for different periods as covered in paragraphs 6.019 to 6.035.

**Capital held abroad**

- 6.019 If capital is held in a country outside the UK (ie England, Scotland, Wales, and Northern Ireland) the amount to be taken into account in the assessment of the resident's ability to pay will depend on the conditions for transfer to the UK.

Reg 24

Transfer of capital to UK not prohibited

- 6.020 Where capital is held abroad and all of it can be transferred to the UK its value in the other country should be obtained and taken into account **less** any appropriate deductions under 6.010.

Sources of valuation

6.021 To establish the value of capital in a country outside the UK, examples of the source of information are

- a bank of the country concerned, including branches in the UK
- a solicitor
- an accountant
- an estate agent (or similar person) in the country concerned
- a stockbroker.

6.022 Examples of the information required in the valuation are

- details of the asset
- names of the beneficial owners
- precise value of the asset (if known) but otherwise
- an estimated value **or**
- if the asset is for sale, the sale price.

Transfer to the UK prohibited

6.023 Where the resident represents that the value of any capital which he holds in a country outside the UK cannot be **wholly** transferred to the UK because of some prohibition in that country (eg currency restrictions) the local authority should require evidence confirming this fact. Acceptable evidence of the prohibition on transfer of value to the UK would include documents/letters from a bank either in this country or abroad, or from a Government official or solicitor.

Evidence required of value

6.024 If the evidence shows that some restriction prohibits the transfer of the value of the resident's assets to the UK, the local authority should seek the following evidence:

- details of the asset
- its value in the country in which it is held
- whether any money is available directly from the asset and, if so, the amount and date it would become payable

- whether the asset is for sale and, if so, the progress and prospects of such a sale
- the nature and terms of the restriction being imposed which prevents the transfer of all the capital to the UK (for example whether some capital can be transferred immediately and the remainder subsequently at intervals).

#### Action on receipt of evidence

- 6.025
1. If the transfer of the capital is prohibited, the local authority should take into account the value that a willing buyer would pay in the UK for the assets. This may possibly be less than the market or surrender value in the foreign country.
  2. If restrictions do not exist, the capital should be valued as in 6.019 to 6.022.

#### **Capital not immediately realisable**

- 6.026 Capital which is not immediately realisable (eg National Savings Bank investment accounts which require one month's notice or Premium Bonds which may take several weeks to realise) should be taken into account in the normal way at its face value.

#### **Disregarded indefinitely**

- 6.027 The capital assets listed below are disregarded indefinitely:

- property in specified circumstances (see Section 7)
- surrender value of any:
  - life insurance policy Schedule 4, para 13
  - annuity Schedule 4, para 9
- payments of training bonus up to £200 Schedule 4, para 17
- payments in kind from a charity Schedule 4, para 17
- any personal possession such as painting or antiques unless they were purchased with the intention of reducing capital for the purpose of reducing the local authority charge (see para 6.065) Schedule 4 para 8
- any capital which is to be treated as income or student loans (see 6.035 to 6.037 and 12.012 to 12.017). Schedule 4 para 14

- any payment made by or derived from:
  - the Macfarlane Trust
  - the Macfarlane (Special Payments) Trust
  - the Macfarlane (Special Payment) (No 2) Trust
  - the Fund (payments to haemophiliacs infected with HIV)
  - the Eileen Trust
  - **The Independent Living Fund**
  - the Independent Living (Extension) Fund
  - the Independent Living (1993) Fund

Schedule 4 para 15

- the value of funds held in trust or administered by a court which derive from a payment for personal injury to the resident (eg vaccine damage, criminal injuries compensation funds)

Schedule 4 para 10 and 19

- the value of a right to receive:
- income under an annuity

Schedule 4 para 9

- outstanding instalments under an agreement to repay a capital sum

Schedule 4 para 13

- payment under a trust where the funds derive from a personal injury

Schedule 4 para 10

- income under a life interest or a life rent

Schedule 4 para 11

- income (including earnings) payable in a country outside the UK which cannot be transferred to the UK

Schedule 4 para 12

- an occupational pension

Schedule 4 para 15

- any rent

Schedule 4 para 15

- any Social Fund payment  
Schedule 4 para 13
- refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home  
Schedule 4 para 13
- any capital resource which the resident has no rights to as yet, but which will come into his possession at a later date, eg on reaching a certain age (reversionary interest)  
Schedule 4 para 4
- the amount of any bank charges or commission paid to convert capital from foreign currency to sterling  
Schedule 4 para 15
- payments from the Department for Work and Pensions to compensate for the loss of entitlements to Housing Benefits or Housing Benefit Supplement  
Schedule 4 para 17
- payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit)  
Schedule 4 para 17
- community charge rebate/council tax rebate  
Schedule 4 para 17
- money deposited with a Housing Association as a condition of occupying a dwelling
- any Child Support Maintenance Payment (unless the child is accommodated with the resident under Part III of the National Assistance Act - in which case take the payment fully into account)
- The value of any ex-gratia payments made on or after 1<sup>st</sup> February 2001 by the Secretary of State in consequence of a person's or person's spouse's imprisonment or internment by the Japanese during the Second World War.  
Schedule 4, para 20.

#### Example

A former Far East prisoner of war receives a £10,000 ex-gratia payment in consequence of their imprisonment. At a later date they require residential care. They have a total of £22,000 capital. When calculating how much capital should be taken into account, the LA disregards the first £10,000 of the resident's capital. The normal

capital rules are then applied to the remaining £12,000. In this case £11,500 of the residents remaining capital would be completely disregarded in addition to the £10,000 ex-gratia payment, and the tariff income rules applied to the remaining £500.

- payments made under a trust established out of funds provided by the Secretary of State in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at time of death of victim) (See also 6.029A)

Schedule 4 para 21

### **Disregarded for 12 weeks**

6.027A In the case of a resident who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which he would otherwise normally occupy as his only or main residence. (see 7.002A)

### **Disregarded for 26 weeks or longer**

6.028 The capital assets listed below are disregarded for 26 weeks or longer where the local authority consider this to be appropriate, eg where a resident is taking legal steps to occupy premises as his home and the legal processes take more than 26 weeks to complete.

- premises which the resident intends to occupy as his home where he has started legal proceedings to obtain possession (26 weeks from the date he first sought legal advice or first commenced proceedings, weeks or longer where reasonable to enable resident to obtain possession)

Schedule 4 para 2

- capital received from the sale of a former home, where the capital is to be used by the resident to buy another house (26 weeks from the date of sale, or longer where appropriate)

Schedule 4 para 3

- assets of any business-owned (or part-owned) by the resident in which he was a self-employed worker, where he has stopped work due to some disease or disablement, but intends to take up work again when he is fit to do so (26 weeks from the date he took up residence in the residential accommodation, or longer where appropriate)

Schedule 4 para 5

- money acquired specifically for repairs to or replacement of the resident's home or personal possessions, provided it is used for that purpose (26 weeks from the date the money was acquired, or longer where appropriate)

Schedule 4 para 7

- money deposited with a Housing Association which is to be used by the resident to purchase another home (26 weeks from the date on which the money was deposited, or longer where appropriate)

Schedule 4 para 7

- premises which the resident intends to occupy as his home where essential repairs or alterations are required (26 weeks from the date the resident takes action to effect the repairs, or longer where appropriate)

Schedule 4 para 16

- grant made under a Housing Act which is to be used to purchase a home or pay for repairs to make the home habitable (26 weeks from the date on which the grant is received, or longer where appropriate)

Schedule 4 para 17

### Disregarded for 52 weeks

6.029 The following payments of capital are disregarded for a maximum period of 52 weeks from the date they are received.

- the balance of any arrears of, or compensation for arrears due to non-payment of:
  - Mobility Allowance
  - Mobility Supplement
  - Attendance Allowance
  - Constant Attendance Allowance
  - Disability Living Allowance
  - Disability Working Allowance
  - Exceptionally Severe Disability Allowance
  - Severe disablement occupational allowance
  - Armed forces service pension based on need for attendance
  - Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
  - Income Support/ **Minimum Income Guarantee**
  - **Working Families Tax Credit**
  - Housing Benefit
  - Special payments to pre-1973 war widows

As the above payments will be paid for specific periods, they should be treated as income over the period for which they are payable; any money left **over 52 weeks after the end of** the period for which they are treated as income has elapsed should be treated as capital.

Schedule 4 para 6

*Example*

A resident is assessed as being able to pay £75 per week pending receipt of Income Support/ **Minimum Income Guarantee**. It is explained to the resident that the charge will be re-assessed once IS/**Minimum Income Guarantee** is received and that back payments will be required. Although not required to do so, the resident chooses to make payments of £90 per week. After six weeks, arrears of IS/**Minimum Income Guarantee** at £35 per week (£210) are received. The charges are re-assessed and the resident is required to pay £110 per week. As the resident has been paying £15 per week more than required, the arrears payable are £120 rather than the full £210 IS/**Minimum Income Guarantee** arrears. The remaining £90 becomes capital and is disregarded for 52 weeks.

**6.029A Amendments to Income Support (General) Regulations 1987 of 14 October 2002 changed the way in which payments of arrears of benefits and related concessionary payments are treated within the financial assessment. From 28 February 2003, The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2003 reinstates the pre-14 October 2002 arrangements for Scottish charging rules, whereby the payment of such arrears are disregarded from the financial assessment for 52 weeks only.**

**6.029B In the interim period between 14 October 2002 and the 28 February 2003, when the new regulations come into force, payments of arrears of specified benefits and related concessionary payments should be treated in accordance with income support regulations. Such payments should, therefore be disregarded for 52 weeks or the entire period of the benefit claim, whichever is longer.**

- Payments or refunds for:
  - NHS spectacles, dental treatment, patient's travelling expenses
  - cash equivalent of free milk and vitamins
  - expenses in connection with prison visits

Schedule 4 para 17

### **Disregarded for 2 years**

6.029C payments made under a trust established out of funds provided by the Secretary of State in respect of persons suffering from variant Creutzfeldt-Jakob disease to (see also 6.027):

- the victim's parent (or guardian) for 2 years from the date of death of the victim (or from the date of payment from the trust, if later) or
- a dependent child or young person until they cease to be a member of the family (ie until they leave school between ages of 16 and 19) – but with a minimum of 2 years.

Schedule 4 para. 21

## Disregarded for other periods

- 6.030 Assets of a business-owned (or part-owned) by the resident in which he has ceased to be a self-employed worker, for a reasonable period to enable him to dispose of the business assets. (See 6.031 onwards)

Schedule 4 para 5

### Meaning of reasonable period of disregard

- 6.031 It is not necessary for a person to have taken steps to realise his share of a business in order to qualify for a disregard. But he should be required to show that it is his clear intention to realise the asset as soon as practicable.

### Information required

- 6.032 The local authority should request
1. information which describes the nature of the business asset
  - and** 2. the resident's estimate of the length of time necessary to realise the asset, or the resident's share of the assets.
  - and** 3. a statement of what, if any, steps have been taken to realise the assets, what these steps were and what is intended in the near future
  - and** 4. any other relevant evidence, for example the person's health, receivership, liquidation, estate agent's confirmation of placing any property on the market.

### Action on receipt of information

- 6.033 If the person has taken steps to realise the capital value of the business, the value of the assets should be disregarded for the period considered to be reasonable, starting from the time the person ceased to be engaged in the business.
- 6.034 If the resident has no immediate intention of attempting to realise the business assets, the capital value of the assets should be taken into account.

## Capital treated as income

### Capital paid by instalment

- 6.035 If the resident is entitled to capital which is payable by instalments, add together:
- a. the total of the instalments outstanding at the time the resident first becomes liable to pay for his accommodation or, in the case of a temporary resident whom the local authority have decided not to charge (as per para 3.005), the first day on which the authority decide to charge for the accommodation; and

b. the amount of other capital held by the resident.

If the total of a. and b. is over £18,500, treat the instalments as income.

If it is £18,500 or less, treat each instalment as capital

Reg 16(1)

Payments under an annuity

6.036 Any payment under an annuity will be treated as income (see 8.013)

Reg 16(2)

Third Party Payments made under an Agreement to meet Excess Fees

6.036A Where a local authority agrees to place a resident in a higher price home on the grounds that there is a third party willing to contribute towards the higher fee, a lump sum payment made by the third party should be divided by the number of weeks for which the payment is made and taken fully into account as part of the resident's income (see 6.044A for payments to clear arrears).

Reg 16(4)

Earnings

6.037 Any income which is derived from employment is to be treated as earnings (see Section 9) and, as such should not be treated as capital.

Reg 16(3)

**Income treated as capital**

6.038 The types of income in the following paragraphs should be treated as capital.

Tax Refunds

6.039 Any refund of income tax charged on profits of a business or earnings of an employed earner.

Reg 22(2)

Holiday Pay

6.040 Any holiday pay paid by an employer more than 4 weeks after the termination or interruption of employment.

Reg 22(3)

Income from a capital asset

6.041 Income derived from capital, eg building society interest or dividends from shares, should be treated as capital from the date it is normally due to be credited to the

resident's account. This does not apply to income from disregarded capital. (see 8.015)

Reg 22(4)

#### Bounty Payments

6.042 Any bounty paid at intervals of at least one year from employment as

- a part time fireman
- an auxiliary coastguard
- a part time lifeboatman
- a member of the territorial or reserve forces.

Reg 22(1)

#### Advance of earnings or loan from employer

6.043 Any advance of earnings or loan made to an employed earner by the employer, should be treated as capital. The payment does not form part of the employee's regular income and would have to be repaid.

Reg 22(5)

#### *Example*

1. A resident received £294 in one week but the pay slip showed that £200 of this was a loan made by the employer.

The local authority should treat £94 as earnings and £200 as capital.

#### Irregular charitable and voluntary payments

6.044 Apart from certain exemptions (payments from AIDS trusts), charitable and voluntary payments which are neither made regularly nor due to be made regularly should be taken into account as capital in the normal way.

Reg 22(7)

#### Third Party Payments to Help Clear Arrears

6.044A Payments in 6.044 will include any payments made by a third party to the resident to help clear arrears of charges for residential accommodation (if these payments are made directly to the local authority they are not treated as belonging to the resident, see 8.062A).

#### Arrears of contributions to a child's custodian

6.045 Any payments of arrears of contributions to a custodian towards the cost of accommodation and maintenance of a child should be treated as capital.

**Trust funds**

6.046 The treatment of trust funds, to both capital and the income from the trust, is dealt with in Section (10).

**Property**

6.047 The treatment of property is dealt with in Section 7.

**Notional capital**

6.048 In some circumstances, a resident may be treated as possessing a capital asset even where he does not **actually** possess it. This is called notional capital.

Reg 25

6.049 A resident's capital is the total of **all** capital, whether actual or notional. That total amount is treated in accordance with the capital rules in Section 6.

Reg 21

6.050 Where a person has actual **and** notional capital, if the actual capital exceeds the capital limit, it is not necessary to consider the question of notional capital.

6.051 Notional capital may be capital:

- a. which would be available to him if he applied for it;
- b. which is paid to a third party in respect of the resident;
- c. of which the resident has deprived himself in order to reduce the amount of charge he has to pay.

**Capital available on application**

6.052 Capital which would become available to the resident if an application were made, but which has not yet been acquired, is to be treated as belonging to the resident. This does not apply to:

1. capital held in a discretionary trust
2. capital held in a trust derived from a payment in consequence of a personal injury.
3. any loan which could be raised against a capital asset which is disregarded, for example the home.

6.053 The local authority should distinguish between

1. capital already owned by the resident, but which in order to realise he must make an application for, for example:

- money held by the resident's solicitor
- Premium Bonds
- National Savings Certificates; **and**

2. capital **not** owned by the resident, but which will become his on application being made, for example

- an unclaimed Premium Bond win.

In the case of 1. the resident has the **actual** capital but not the notional capital. In the case of 2. the resident has no actual capital but should be treated as having **notional** capital.

Date to be taken into account

6.054 When the local authority treats capital available on application as notional capital they should only do so from the date it could be acquired by the resident.

6.055 Spare.

### **Deprivation of Capital**

General

6.056 The local authority may feel that a resident has deprived himself of a capital asset in order to reduce his accommodation charge. If this is the case the local authority may treat the resident as still possessing the asset. The following factors will need to be considered.

Reg 25(1)

Forms of capital to be considered

6.057 The local authority should only consider questions of deprivation of capital when the resident ceases to possess capital which would otherwise have been taken into account.

eg a resident gives a diamond ring worth £2,000 to her daughter the week before she entered residential accommodation. The local authority should not consider deprivation as, had the ring still been possessed, it would not be taken into account as capital. **However**, if the resident had purchased the ring

immediately prior to giving it to her daughter with £2,000 which had previously been in a Building Society account, deprivation should be considered.

### Ownership

- 6.058 The local authority should decide from available evidence whether the resident owned the capital (see 6.007 and 6.008 for details of ownership).

### Has deprivation occurred?

- 6.059 It is up to the resident to prove that he no longer has a resource. Failure to do so will result in the local authority treating the resident as if he still possesses the **actual** capital. Examples of acceptable evidence of the disposal of capital would include

- a trust deed
- deed of gift
- receipts for expenditure
- proof that debts had been repaid.

- 6.060 *Examples* of where a person has deprived themselves of capital (although not necessarily for the purposes of avoiding a charge for accommodation)

- A lump-sum payment has been made to someone else (eg as a gift or to repay a debt)
- Substantial expenditure has been incurred (eg on an expensive holiday)
- The title deeds of a property have been transferred to someone else
- Money has been put into a trust which cannot be revoked
- Money has been converted into another form which would fall to be disregarded (eg personal possessions)
- Capital has been reduced by living extravagantly (eg gambling or following a much higher standard of living than the resident could normally afford).

### Purpose of disposing of an asset

- 6.061 There may be more than one purpose for disposing of a capital asset only one of which is to avoid a charge for accommodation. Avoiding the charge need not be the resident's main motive but it must be a **significant** one.

- 6.062 If, for example, a person has used capital to repay a debt, careful consideration should be given to whether there was a need for the debt to be repaid at that time. If it seems unreasonable for the resident to have repaid that debt at that time, it may be that the purpose was to avoid a charge for accommodation.

#### *Examples*

A person moves into residential accommodation and has a 50% interest in property which continues to be occupied by his spouse. The local authority ignore the value of the resident's share in property while the spouse lives there but the spouse decides to move to smaller accommodation and so sells the former home. At the time the property is sold, the resident's 50% share of the proceeds could be taken into account in the charging assessment but, in order to enable the spouse to purchase the smaller property, the resident makes part of his share of the proceeds from the sale available to the spouse. In these circumstances, in the Department's view, it would not be reasonable to treat the resident as having deprived himself of capital in order to reduce his residential accommodation charge.

A person has £18,000 in the bank. He is about to move permanently to a care home, and before doing so, pays off £3,500 outstanding on a loan for home improvements. In these circumstances, it would **not** be reasonable to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.

A resident has £12,000 in a building society. Two weeks before entering the home, he bought a car for £10,500 which he gave to his son on entering the home. If the resident knew he was to be admitted permanently to a care home at the time he bought the car, it would be reasonable to treat this as deliberate deprivation. However, all the circumstances must be taken into account. If he was admitted as an emergency and had no reason to think he would not be in a position to drive the car at the time he bought it, in the Department's view, it would not be reasonable to treat it as deliberate deprivation.

#### Timing of the disposal

6.063 The timing of the disposal should be taken into account when considering the purpose of the disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation. The local authority should bear in mind, however, that deprivation can be considered for resources disposed of at any time. The 6 month restriction only applies to using the provisions of Section 21 of the Health and Social Services and Social Security Adjudication Act 1983 (see Circular SW15/1993).

#### Conversion of capital to personal possessions

- 6.064 Where, for the purpose of avoiding or reducing the charge for accommodation, capital which would not have been disregarded has been used to acquire personal

possessions, the current market value of those possessions should be taken into account as an actual resource. Their market value should not be disregarded under para 6.027.

- 6.065 If the resident, in depriving himself of an actual resource, converted that resource into another actual resource of lesser value, he should be treated as notionally possessing the difference between the value of the new resource and the one which it replaced eg, if the value of personal possessions acquired is less than the sum spent on them the difference should be treated as a notional resource.

### **Deprivation decided**

- 6.066 If the local authority decides that the resident has disposed of capital in **order** to avoid a charge or to reduce the charge payable, the local authority will need to decide whether to treat the resident as having the capital (notional capital) and assess the charge payable accordingly; **and then** whether:

a. it is realistic to recover the assessed charge from the resident (bearing in mind that they may not have the means to pay the debt which will be accruing);

**or**

b. if the asset was transferred not more than 6 months before the date the resident begins to live in residential accommodation, or while the resident is living in the accommodation, to use the provisions of Section 21 of the Health and Social Services and Social Security Adjudication Act 1983 to transfer the liability to the recipient of the asset for that part of the charges assessed as a result of the notional capital (see Circular SW15/93).

### **Diminishing notional capital**

#### Calculation of the rate at which notional capital should reduce

- 6.067 Where a resident has been assessed as having notional capital that capital will have to be reduced each week by the difference between the rate which he is paying for the accommodation and the rate he would have paid if he was not treated as possessing the notional capital.

Reg 26

#### *Example*

A resident is assessed as having notional capital of £14,250 plus actual capital of £6,000. This results in him having to pay the standard charge of eg £200.

If he did not possess the notional capital, his capital would not affect his ability to pay for the accommodation so, based on an income of £83 and a personal allowance of, for example, £13 he would be assessed as paying a charge of £70.

**The notional capital should be reduced by £130 per week ie the difference between the sum he has to pay because of the notional capital (£200) and the charge he would have had to pay if the notional capital did not exist (£70).**

## SECTION 7 - TREATMENT OF PROPERTY

### General

- 7.001 If the capital asset is a house or land there are circumstances under which its value must be disregarded indefinitely and circumstances where its value must be taken fully into account. Local authorities also have an element of discretion over whether to take the value of a property into account see 7.007.

### Property to be disregarded

- 7.002 The value of a dwelling normally occupied by a resident as his home should be ignored if his stay in a care home is temporary and
- he intends to return to the dwelling, and the dwelling is still available to him,
- or**
- he is taking steps to dispose of the property in order to acquire another more suitable property for the resident to return to.

Only one dwelling can be disregarded in these circumstances.

**NB.** If the resident's stay is initially thought to be permanent but turns out to be only temporary, the dwelling he normally occupies as his home should be treated in the same way as if he had been temporary from the outset.

Schedule 4 para 1

### Disregard for the first 12 weeks of a permanent stay

- 7.002A In the case of a resident who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which he would otherwise normally occupy as his only or main residence **should** be disregarded for the first 12 weeks of a permanent stay. This may not be their first permanent admission to permanent residential care.  
Schedule 4 para 1A
- 7.002B A resident is entitled to the 12 week property disregard irrespective of his remaining capital once the value of his property is disregarded from the financial assessment.**
- 7.002C A resident may be required to contribute towards his care costs in the first 12 weeks of permanent stay in a care home if his remaining capital exceeds the lower capital limit of £11,500.**
- 7.002D** Where a person leaves residential care (where they have been living on permanent basis), before the end of the 12 weeks and then re-enters on a permanent basis within 52 weeks they will be entitled to the remaining balance of the 12 week

disregard. If a resident leaves permanent care and then re-enters more than 52 weeks later, they will qualify for the disregard again.

Only one dwelling can be disregarded in these circumstances.

**Other disregards of property**

7.003 Where the resident no longer occupies a dwelling as his home, its value should still be disregarded where it is occupied in whole or in part by

- the resident's partner or former partner (except where the resident is estranged or divorced from the partner/former partner)
- a relative of the resident or member of his family (ie another person for whom the resident shall be treated as responsible) who
  - is aged 60 or over, or
  - is aged under 16 and is a child whom the resident is liable to maintain, or
  - is incapacitated.

Schedule 4 para 2

Meaning of relative

7.004 The term "relative" in paragraph 7.003 is defined to be any of the following

- A. parent (including an adoptive parent)
- B. parent-in-law
- C. son (including adoptive son)
- D. son-in-law
- E. daughter (including adoptive daughter)
- F. daughter-in-law
- G. step-parent
- H. step-son
- I. step-daughter
- J. brother
- K. sister

- L. grandparent
- M. grandchild
- N. uncle
- O. aunt
- P. nephew
- Q. niece
- R. the spouse or unmarried partner of any of A to K inclusive.

7.004A The term "family" in paragraph 7.003 includes any of the following:

- A a married or unmarried couple and any person who is
  - a member of the same household **and**
  - the responsibility of either or both members of the couple **or**
- B a person who is not a member of a married or unmarried couple and who is
  - a member of the same household, **and**
  - the responsibility of the resident.

Meaning of "incapacitated"

7.005 The meaning of "incapacitated" in paragraph 7.003 is not defined in the regulations. It will be reasonable to conclude that a relative is incapacitated if either of the following conditions applies

- i. the person is receiving one (or more) of the following social security benefits  
 Incapacity Benefit, Severe Disablement Allowance, Disability Living Allowance, Attendance Allowance, Constant Attendance Allowance, or an analogous benefit;
- or
- ii. the person does not receive any of the benefits listed in (i) but the degree of incapacity is equivalent to that required to qualify for any one of those benefits. Medical or other relevant evidence may be needed before a decision is reached.

Property acquired but not yet occupied

- 7.006 Where the resident has acquired property which he intends eventually to occupy as his home, disregard the value of the dwelling for up to 26 weeks from the date the resident first takes steps to take up occupation, or such longer period as is considered reasonable.

Schedule 4 para 16

### **Discretion to disregard property**

- 7.007 Where the local authority considers it reasonable to do so, they can disregard the value of premises not covered in paragraphs 7.002-006 in which a third party continues to live. Local authorities will have to balance the use of this discretion with the need to ensure that residents with assets are not maintained at public expense. It may be reasonable, for example, to disregard a dwelling's value where it is the sole residence of someone who has given up their own home in order to care for the resident, or someone who is an elderly companion of the resident particularly if they have given up their own home.

Schedule 4 para 18

- 7.008 Where the local authority has decided to disregard the value of a property, it is left to the local authority to decide if and when to review that decision. It would be reasonable, for example, where the authority has been ignoring the value of a property because a long-term carer was living there, for the authority to begin taking account of the value of the property when the carer dies or moves out.

### **Property to be taken into account**

#### Legal and beneficial owners

- 7.009 The treatment of property will depend on whether the resident is a **legal** or a **beneficial** owner. A legal owner is a person in whose name the property is held. A beneficial owner is one who is entitled to receive the profits or proceeds of property. In most cases the legal and beneficial owners will be the same person but, where this is not the case, the value of the property will be valued according to the following paragraphs.

#### Legal ownership

- 7.010 For the purposes of assessing the resident's ability to pay a charge no account should be taken of the value of a property where the resident is a legal owner but has no beneficial interest in the property ie the resident is holding the property on trust for the beneficial owners and has no right to the proceeds or profits should the property be sold.

#### Beneficial ownership

- 7.011 Where the resident is the sole beneficial owner of a property the capital value should be taken into account in full. If the resident and the local authority agree

that the value of the property, after taking into account any deductions in 6.010 (expenses of sale and debts secured on the asset), is over **£18,500**, or when added to any other capital assets will take the total capital over **£18,500**, a precise valuation will not be needed. If the resident disputes the value, or there is some doubt as to the value, a professional valuation should be obtained.

### **Joint beneficial ownership of property**

7.012 Where a resident is a joint beneficial owner of property, ie he has the right to receive some of the proceeds of a sale, it is the resident's **interest** in the property which is to be valued as capital, and not the property itself. The value of this interest is governed by:

1. the resident's ability to re-assign the beneficial interest to somebody else
2. there being a market ie the interest being such as to attract a willing buyer for the interest.

Reg 27(2)

7.013 In most cases there is unlikely to be any legal impediment preventing a joint beneficial interest in a property being re-assigned. But the likelihood of there being a willing buyer will depend on the conditions in which the joint beneficial interest has arisen.

7.014 Where an interest in a property is beneficially shared between relatives, the value of the resident's interest will be heavily influenced by the possibility of a market amongst his fellow beneficiaries. If no other relative is willing to buy the resident's interest, it is highly unlikely that any "outsider" would be willing to buy into the property unless the financial advantages far outweighed the risks and limitations involved. The value of the interest, even to a willing buyer, could in such circumstances effectively be nil. If the local authority is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained.

7.014A If ownership is disputed and a resident's interest is alleged to be less than seems apparent from the initial information, the local authority will need written evidence on any beneficial interest the resident, or other parties possess. Such evidence may include the person's understanding of events, including why and how the property came to be in the resident's name or possession. Where it is contended that the interest in the property is held for someone else, the local authority should require evidence of the arrangement, the origin of the arrangement and the intentions of its future use. The law of equity may operate to resolve doubts about beneficial ownership, by deciding what is reasonable by reference to the original intentions behind a person's action, rather than applying the strict letter of the law.

*Example*

The resident has a beneficial interest in a property worth £60,000. He shares the interest with two relatives. After deductions for an outstanding mortgage, the residual value is £30,000. One relative would be willing to buy the resident's interest for £5,000.

Although the value of the resident's share of the property may be £10,000, if the property as a whole had been sold, the value of just his share is £5,000 as this is the sum he could obtain from a willing buyer.

The resident's actual capital would be £4,500 because a further 10% would be deducted from the value of her share to cover the cost of transferring the interest to the buyer.

#### Property held in a shared trust

- 7.015 Where a property is held in Trust and the resident is both a joint trustee **and** joint beneficiary, he legally owns the property as a trustee of the Trust, but purely on a "fiduciary" basis ie he is legally obliged to administer the Trust for the benefit of the Trust - as a whole, and not for his own particular purposes. His **real** interest is that of a **beneficial** owner, and falls to be valued accordingly (paragraphs 7.012 to 7.014).

#### **Sale of jointly owned property**

- 7.016 See the example at 6.062 for the consideration of deprivation of capital where a jointly owned property is sold and the resident passes some of his share of the proceeds to the joint owner.

#### **Property owned but rented to tenants**

- 7.017 Where a resident owns property, the value of which takes the resident's total capital above £18,500, and the property is rented to tenants the resident will be assessed as able to pay the standard charge for the accommodation (because of the level of capital). It will then be for the resident to agree to pay the rental income (along with any other income) to the local authority in order to reduce the accruing debt.

#### **Renting of property under deferred payment agreements**

- 7.017A Any income, which a person receives from renting a home subject to a deferred payment agreement, will be taken into account in the financial assessment. (See. 7.018-7.025)**

#### **Deferred Payment of Care Home Fees**

- 7.018 Since 1 July 2002, certain residents who have been assessed as possessing insufficient income and capital, excluding their property, to meet their care home fees may enter into an agreement with their local authority to defer payment of part of their contribution towards these charges and to settle these costs when their home is**

eventually sold or from their estate. A deferred payment agreement will be a legal agreement between the local authority and the individual, which defines the portion of a person's care home fees to be deferred and provides for the grant to the local authority of a standard security over the home to cover the deferred amount. There can be no backdating of deferred payment agreements to before the scheme's commencement date of 1 July 2002. See [Community Care Circular CCD 7/2002: deferred payment of care home fees](#)

### Eligibility for Deferred Payment Agreements

**7.019** Eligibility is restricted to any person who:

- a) has been assessed as needing a care home place;
- b) has capital at or below £11,500 when his resources, excluding his home are assessed;
- c) would not normally have his home disregarded from such a financial assessment. (See 7.002-7.008), (This restriction only applies to deferral of the relevant portion of 'normal' care costs.);
- d) does not wish to sell his home or is unable to sell it quickly enough to pay for his care home fees; and
- e) can grant the authority a standard security against his home, to secure a reasonable estimate of the total amount which will be owed – i.e. the total of any deferred payments plus any subsequent interest payable.

**The Community Care (Deferred Payment of Accommodation Costs)(Scotland)  
Regulations 2002. Regulations 2 and 3**

### Discretion to defer payments

**7.020** It will be for local authorities to decide how to prioritize between different applicants for deferred payments and they should publish clear guidelines as to how they will do so.

**7.021** Local authorities have discretion whether to defer part or all of any top-up payment which a resident is to make.

**The Community Care (Deferred Payment of Accommodation Costs) (Scotland)  
Regulations 2002. Regulation 4 (2)**

### Amounts to be Deferred

**7.022** The amount to be deferred is that which would otherwise be attributable to the capital value of the person's home in the residential care financial assessment.

### **7.023 Deferment of ‘normal’ fees.**

**The part of the ‘normal’ fees to be deferred is the difference between;**

**a) what a resident has to contribute under the residential care financial assessment from income and assets including his home (taking account of any payments due for personal or nursing care); and**

**b) the amount he would have had to contribute under the residential care financial assessment if the home were disregarded (again taking account of payments for personal or nursing care)**

**The Community Care (Deferred Payment of Accommodation Costs) (Scotland) Regulations 2002. Regulation 4 (1)**

### **7.024 Deferment of top-up payments**

**It may also be possible for a resident to defer part of or the full amount of top-up payments made in addition to the ‘normal’ fees in the funding of a more expensive home. Local authorities and residents will need to give careful consideration to the sustainability of the topping-up arrangement before including top-ups in a deferred payment agreement. (See.8.018-8.018G)**

**The Community Care (Deferred Payment of Accommodation Costs)(Scotland) Regulations 2002. Regulation 4**

### **Interest on Deferred Payments**

**7.025 Deferred payments will be interest-free until the agreement is terminated by the resident or 56 days after his death. Interest will then be charged at a ‘reasonable’ rate as determined by the local authority. The level of interest charged should not be punitive in situations where a property takes some time to sell. However, interest rates may be sufficient to discourage people from intentionally delaying settling the balance of the deferred amount.**

**The Community Care and Health Act 2002 (Interest Rates on Deferred Payments) Directions 2003**

## SECTION 8 - INCOME OTHER THAN EARNINGS

### General

#### What is income?

- 8.001 A resident's resources are either capital or income. It may not always be obvious whether a payment should be treated as capital or income, but generally, a payment of income is one which:
- a) is made in respect of a period; and
  - b) forms part of a series of payments (whether or not payments are received regularly).
- 8.002 A payment of income is taken into account for a period equivalent to that which it represents, eg a payment due to be made weekly is taken into account for a week, a payment due to be made calendar monthly is taken into account for a month, but a weekly rate is calculated before assessment. Guidance on the attribution of income to a specific period is in Section 9.

### Treatment of income

- 8.003 Income is treated in one of three ways:
- a) taken into account in full;
  - b) partly disregarded; or
  - c) fully disregarded.
- 8.004 Paragraphs 8.005 to 8.058 below list the types of income in each category, and provide further details where necessary.

### Income taken fully into account

- 8.005 The following types of income are taken into account in full:
- Most Social Security benefits (8.006)
  - Annuity income (except home income plans) (8.013)
  - Cash in lieu of concessionary coal
  - Child Support Maintenance payments where the child is accommodated with the resident under Part III of the National Assistance Act 1948 (see 8.038 for other cases)
  - Home Office **ex gratia** incapacity allowances

- Income from certain disregarded capital (8.015)
- Income from an insurance policy (except mortgage protection insurance) (8.016)
- Income from certain sub-let (8.017)
- Occupational Pensions
- Refund of income tax
- Third party payments made under an agreement to meet excess fees (8.018)
- Trust income (see Section 10)
- War Orphan's pension.

Reg 15(1)

### Social Security benefits

8.006 The Social Security benefits listed below are taken fully into account. However see 8.042A for the treatment of certain dependency increases.

- Attendance Allowance (AA)/Disability Living Allowance (Care Component) (this also includes any Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Allowance (ESDA) payable with Industrial Injuries Disablement Benefit or War Disablement Benefit) paid to **permanent** resident see 3.014 for treatment of AA/DLA (Care) paid to temporary residents.
- Child Benefit where the child is accommodated with the resident under Part III of the National Assistance Act 1948 (see 8.038).
- Disability Working Allowance
- **Working Families Tax Credit**
- Guardians Allowance
- Job Seekers Allowance
- Housing Benefit - where the resident has been admitted permanently into unregistered accommodation or local authority accommodation not providing board so Housing Benefit is being paid to meet the accommodation charge.
- Income Support (but see paragraph 8.043 for exception)

- Industrial Death Benefit
- Industrial Injuries Disablement Benefit (IIDB) (8.008) - see also above and 3.014 for treatment of CAA paid with IIDB
- Incapacity Benefit
- Invalid Care Allowance
- Maternity Allowance
- Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme payments (8.009) - see also above and 3.014 for CAA and ESDA paid with these payments
- Retirement Pension 8.010
- Severe Disablement Allowance
- Widow's benefit widow's pension (WP) and widowed mother's allowance (WMA)) (8.011). See Section 6 (Capital) for treatment of widow's payment (WPT)
- Workmen's compensation (8.012) - see also above and 3.014 for treatment of AA/CAA paid under the Workmen's Compensation Act

Reg 15(1)

#### Deductions from benefits

- 8.007 Where any Social Security benefit is being subjected to a reduction (other than a reduction because of voluntary unemployment) eg because of an earlier overpayment, the amount to be taken into account should be the gross amount of benefit before reduction

Reg 15(3)

#### Industrial Injuries Disablement Benefit (IIDB)

- 8.008 Industrial Injuries Disablement Benefit is taken fully into account. However, some additional allowances may be paid with IIDB. These are:

- a) ESDA (Exceptionally Severe Disablement Allowance);
- b) CAA (Constant Attendance Allowance); and
- c) REA (Reduced Earnings Allowance)

ESDA and CAA are fully disregarded (see 3.013). REA is taken fully into account.

Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme

- 8.009 These payments are made to people who are not entitled to workmen's compensation (8.012) or IIDB (8.008). They are taken fully into account. AA may be paid with these payments - see 3.014.

Retirement Pension

- 8.010 Retirement Pension may include various additions and increases, all of which are to be taken into account in full. AA may be paid with RP see 3.014 and 8.006 for treatment of AA.

Widow's benefit (Widow's Pension (WP) and Widowed Mother's Allowance (WMA))

- 8.011 A widow may be entitled to WP or WMA. Both are taken fully into account. Widow's Payment (WPT) may be paid in addition to WP or WMA. WPT is paid as a lump sum and is treated as capital.

Workmen's compensation

- 8.012 These payments are awarded for industrial injuries and diseases resulting from employment before the IIDB scheme started. AA may be paid with workmen's compensation - see 3.014 and 8.006 for treatment of AA.

**Annuity Income**

- 8.013 An annuity is a fixed sum payable at specified intervals (normally annually), in return for a premium payable either in instalments or as a single payment. The annuity income is payable for a specified period, such as the recipient's lifetime.
- 8.014 Income from an annuity is to be taken fully into account except when the annuity is:
- a) purchased with a loan secured on the resident's dwelling (partial disregard - see paragraphs 8.025 to 8.030);
  - b) a gallantry award eg Victoria Cross Annuity, George Cross Annuity (fully disregarded - see paragraph 8.043); or

**Income from certain disregarded capital**

- 8.015 Income from capital will generally not be treated as income (see 6.041). However, income which comes from certain forms of disregarded capital is taken fully into account as income **for as long as the capital is disregarded**. This will be the case where the capital is:
- the normal dwelling of a temporary resident (but see 3.011 for disregard of income needed to cover housing commitments)

- business assets which the resident is taking steps to dispose of
- any capital held in trust which is as a result of a personal injury
- a dwelling which the resident intends to occupy as his home and which he is taking steps to occupy
- the former dwelling of the resident which is occupied by a partner or a relative of the resident who is over age 60, under 16 and whom the resident is liable to maintain, or incapacitated premises belonging to the resident which are occupied in whole or in part by a third party, where the local authority are using their discretion to disregard those premises
- any premises which the resident intends to occupy as his home and in respect of which he is taking legal steps to obtain possession
- any premises which the resident intends to occupy as his home but which needs repairs or alterations in order for the resident to occupy

However, in the final five situations only, income which covers mortgage repayments, payments for water rates and council tax may be disregarded - see paragraph 8.037.

Schedule 3 para 14

### **Income from insurance policies**

8.016 Any form of income from an insurance policy is generally taken into account in full. The only exception is income from a mortgage protection policy (paragraph 8.033).

### **Income from certain sub-lets**

8.017 When a resident sub-lets a part of their property which is not part of the living accommodation, for example the garage or the garden, the income from that sub-let is taken fully into account. The treatment of income from other sub-lets is described in paragraph 8.031.

### **Payments made to meet higher fees / Topping-up of Care Home Fees**

**8.018 The fees of someone supported by a local authority in a care home may be topped up by the resident or a third party such as a relative or friend, subject to certain restrictions, including local authority approval. These payments are to provide greater choice to residents wishing to take up a care home place more expensive than their local authority would normally expect to pay. These new rules, set out in [Community Care Circular CCD 6/2002 – Topping up of Care Home Fees](#) only apply to topping up arrangements entered into from 1 July 2002.**

### **Third Party Top-Ups**

**8.018A** Top-ups can be made by a third party such as a relative or a friend, including a ‘liable relative’ who is contributing to the care of the resident. There are no restrictions on the resources that a third party may use for topping up.

### **Top-Ups made by ‘liable’ relatives**

**8.018B** Local authorities will need to exercise particular caution in deciding whether to approve topping up by a ‘liable relative’ who has been assessed as having to contribute towards the resident’s care. In coming to its decision, the authority will need to consider not only the sustainability of the arrangement but also its effect on the finances of the liable relative in addition to the payments he is already required to make.

### **Top-ups by the Resident**

**8.018C** Top-ups can also be made by residents from their own resources, but are restricted to people who:

- a) are benefiting from the disregard of the value of their home from the financial assessment for the first 12 weeks of their permanent residential care;
- b) are funding part of their contribution to care home fees through a deferred payment agreement; or
- c) are better off as a consequence of payments for free nursing care or free personal care (and have chosen to have their care arranged by the local authority)

**The Community Care (Additional Payments) (Scotland) Regulations 2002  
Regulation 2(3)**

### **Resources that may be used for topping-up**

**8.018D** To ensure that people are not impoverished and to avoid topping up arrangements that cannot be sustained, a resident may only top-up from the following resources:

- a) Earnings disregarded under the residential care financial assessment. (See 9.001-9.023)
- b) Income disregarded under the residential care financial assessment. (See 8.001-8.081)

c) Capital disregarded under the residential care financial assessment. (See 6.001-6.067), but excluding the disregards relating to the resident's former home.

d) For people benefiting from the twelve-week property disregard, capital over £11,500, but only for the duration of that disregard.

e) For people with a deferred payment agreement, capital over £18,500 from the value of their home, which the local authority decides to allow as additional contributions as part of the deferred payment agreement.

f) For people who are better off as a result of personal or nursing care payments who do not have a deferred payment agreement:

-capital over £18,500 and

-the difference between the amount they have to contribute to their accommodation and the amount they would have contributed had they not been eligible for such payments.

The personal expenses allowance will not be available for topping up. The local authority should satisfy itself that the topping up arrangement can be sustained throughout the resident's stay in the home.

The Community Care (Additional Payments)(Scotland) Regulations 2002  
Regulation 2 and 3

### Payment of Top-Ups

8.018E The local authority has discretion to either collect top up payments and contract with the care home for the full amount or to leave the resident and/or third party to make the top up payments direct to the care home.

### Deferment of top-up payments

8.018F It may also be possible, subject to certain restrictions, for a resident to defer part of or all of any agreed top-up. (See. 7.024)

8.019 Other payments made by a third party should be treated in accordance with paragraphs 8.051 to 8.057.

### Trust income

8.020 See Section 10

### Income partly disregarded

#### £10 disregard

8.021 The following types of income attract a £10 disregard:

- Payments to victims of National Socialist persecution (paid under German or Austrian law) Schedule 3 para 11
- Civilian war injury pension Schedule 3 para 11
- War disablement pension (8.023) - see also 3.014 and 8.006 for treatment of AA/CAA paid with WDP
- War widow's and war widower's pension - but see 8.046 for war Widow's Special Payments

#### Overall disregard

- 8.022 Where more than one payment qualifies for a £10 disregard, the amount disregarded **overall** is £10. The only exception is where 2 or more payments, which were due to be paid and therefore taken into account in different weeks, are in fact taken into account in the same week because it was not practical to take them into account for the weeks in which they were due to be paid. Schedule 3 para 31

#### War disablement pension

- 8.023 War disablement pension may include various additions and increases. Disregard £10 of the total amount. CAA may also be in addition to any disregard which may be appropriate on CAA which may also be paid with war disablement pension - see 3.014 and 8.006 for treatment of AA and CAA.

#### **Other disregarded sums**

- 8.024 Varying amounts are disregarded from the following types of income:
- Occupational pensions, personal pensions and payments from retirement annuity contracts (8.024A)
  - Certain charitable payments (8.054)
  - Annuity income from a home income plan (8.025)
  - Income from sub-letting (8.031)
  - Mortgage protection insurance policies (8.033)
  - Income from certain disregarded capital (8.037).

#### **Occupational pensions**

8.024A Where a resident is in receipt of an occupational pension, personal pension or payment from a retirement annuity contract and has a spouse who is not living in the same care home, 50 per cent of the occupational pension, personal pension, or retirement annuity contract payment should be disregarded providing the resident passes 50 per cent on to his spouse. If the resident passes less than 50 per cent of any of these payments, or none of them, to his spouse, for whatever reason, then the disregard should not be applied and the full amount of pension in payment to the resident should be taken into account. The only other time when 50 per cent of any of the payments a married resident should cease to be disregarded is on death of the spouse or divorce.

Schedule 3 para 10A

8.024B Where an unmarried partner rather than a spouse is involved, the LA should consider their discretionary powers to vary the PEA (see 5.005). This requirement to disregard 50 per cent of the occupational pension does not alter the LA's discretion to vary the PEA in special circumstances (see 5.005).

8.024C Where a spouse is legally entitled to receive part of the occupational, personal pension or retirement annuity contract (eg by means of a Court Order) that part of the pension does not belong to the resident and should, therefore, not form part of his income. Of the occupational pension actually in payment to the resident 50 per cent should be disregarded in accordance with 8.024A.

Annuity income from home income plan

8.025 There are different types of annuity plans (see paragraphs 8.013 to 8.014). Although income from an annuity is normally taken fully into account, this general rule does not apply to "home income plans". Under these schemes, a retired person who owns his home obtains a loan secured on the property. He uses part of the loan (or all of it) to buy an annuity which provides an income. He may also have used part of the loan for other purposes, for example improving or extending the property. The gross income from the annuity covers the interest payments on the original loan and provides an income for the person.

8.026 In order to qualify for any disregard on the income from a home income plan, one of the annuitants must still be occupying the dwelling as his home. This might happen where a couple has a joint annuity secured on the home, and one partner continues to occupy the home when the other moves permanently to a care home. In these circumstances, if the partner at home receives all the income and makes full repayments on the loan, it will probably be appropriate to treat the income as possessed by the partner at home. In this case, consider the question of liability of relatives - see Section 11.

8.027 Where neither the resident nor any other annuitant occupies the dwelling as his home, no disregard can be allowed on the income. When a single person moves permanently to a care home, therefore, and ceases to occupy the dwelling on which the loan is secured as his home, there will be no disregard on the income from the annuity. In these circumstances the property may be sold, and the loan repaid. Consider whether to take the value of the property into account as capital under the

provisions in Section 7. Where the property is taken into account, the amount of the loan secured on the property will fall to be deducted in calculating the value.

8.028 Where a resident receives income from a home income plan annuity, and a joint annuitant continues to occupy the property, specified amounts can be disregarded from the gross weekly income, but **only** where certain conditions are satisfied (see paragraph 8.029). The amounts which may be disregarded are:

- a) the net weekly interest on the loan where income tax is deductible from the interest; or
- b) the gross interest on the loan in any other case.

8.029 The conditions to be satisfied before any amount may be disregarded from the weekly income are:

- a) the loan must have been made as part of a scheme which required that at least 90% of that loan be used to purchase the annuity; and
- b) the annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant; and
- c) the person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan; and
- d) the person who obtained the loan (or each of the annuitants where there are more than one), must have reached the age of 65 at the time the loan was made; and
- e) the loan was secured on a dwelling in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that dwelling; and
- f) the person who obtained the loan or one of the other annuitants occupies the dwelling as his home at the time the interest is paid.

8.030 Where the resident is using part of the annuity income to repay the loan, disregard the amount he pays as **interest** on the loan. Under some schemes, the capital is not repaid until the person dies or the annuity ends. In this case the payments the person makes on the loan will be interest only. If the resident qualifies for tax relief on the interest he pays, disregard the net interest paid. Otherwise, disregard the gross interest.

Schedule 3 para 12

#### Income from sub-letting

8.031 Income from sub-letting (whether paid by the sub-tenant or a third party) carries a disregard only where the resident occupies the dwelling of which part is sub-let as

his home. This will therefore apply only to assessing a temporary resident. The disregard is shown in Annex A. See also paragraph 8.017 for income from sub-letting part of the property which is not part of the living accommodation, eg garage or garden).

Schedule 3 para 12

#### Income from boarders

- 8.032 A boarder is someone for whom at least one cooked meal is provided. Where a resident has income from a boarder (whether paid by the boarder or a third party) the first £20 of the income should be ignored **plus** half of any balance over £20.

#### *Example*

A temporary resident receives £50 per week as income from a boarder living in his previous dwelling. The first £20 is ignored plus half of the remaining £30 (ie £15) making a total of £35 of the £50 to be ignored.

Schedule 3 para 13

#### Mortgage protection insurance policies

- 8.033 Any income from an insurance policy is normally taken into account. However, this does not apply to income from mortgage protection policies. A mortgage protection policy is one which is taken out:

- a) to insure against the risk of not being able to make repayments on a loan; or
- b) to protect the premiums payable on an endowment policy where the policy is held as security for a loan.

- 8.034 The income from these policies qualifies for a disregard **only** where the purpose of the loan is:

- a) to acquire an interest in the dwelling occupied as the home; or
- b) for repairs or improvements to the dwelling occupied as the home.

- 8.035 The income from the policy **must be** being used to meet the repayments on the loan.

- 8.036 The amount of income from such a policy which should be disregarded is the weekly sum of:

- a) the amount which covers the interest on the loan; plus
- b) the amount of the repayment which reduces the capital outstanding; plus

- c) the amount of the premium due on the policy.

Schedule 3 para 19

It should be remembered that Income Support may be adjusted to take account of the income from the policy, so income previously disregarded under 3.009 or 8.040 may no longer be in payment.

Income From Certain Disregarded Capital

- 8.037 Where income is received from certain property of which the capital value is being disregarded (see 8.015), the income should be taken into account in full **less** any mortgage repayments, or payments of Water rates or payments of Council Tax made during the same period as that in respect of which the income was received.

Schedule 3 para 14

**Income fully disregarded**

- 8.038 The following types of income are fully disregarded:

- See 3.014 for the treatment of AA and DLA (Care) for temporary residents and 8.006 for permanent residents
- That part of an Income Support award which is paid in respect of home commitments for temporary residents (8.039)
- Certain charitable and voluntary payments (8.056)
- Child Support Maintenance Payments and Child Benefit unless the child is accommodated with the resident under Part III of the National Assistance Act 1948
- Christmas bonus (8.041)
- Any payment from:
  - the Macfarlane Trust
  - the Macfarlane (Special Payments) Trust
  - the Macfarlane (Special Payments) (No 2) Trust
  - the Fund (payments to haemophiliacs infected with HIV)
  - the Eileen Trust
  - the Independent Living (Extension Fund)
  - the Independent Living (1993) Fund (8.042)
- Council Tax Benefit

- Disability Living Allowance (Mobility Component) and
- Mobility supplement
- Dependency increases paid with certain benefits (8.042A)
- Gallantry awards (8.043)
- Income frozen abroad (8.044)
- Income in kind (8.045)
- Social Fund payments
- War widows special payments (8.046)
- Work expenses paid by employer, and expenses paid to voluntary workers (8.049 and 8.050).

Income Support/**Minimum Income Guarantee** paid for home commitments

- 8.039 Under the Income Support rules, an amount may be included in the award of Income Support/**Minimum Income Guarantee** in respect of specified expenses to maintain the home address. Payment may continue for up to 52 weeks.
- 8.040 Any Income Support/**Minimum Income Guarantee** a resident receives is normally taken into account in full in assessing the charge. However, where the award includes an amount for home commitments, that part of the Income Support/**Minimum Income Guarantee** award is fully disregarded. The amount awarded for home commitments is shown as a separate entry on form A14N (clerical) or computer produced Award Calculation Sheet which the **Jobcentre Plus/ Pension Centre** sends to the resident. If the form is not available, ask the **Jobcentre Plus/ Pension Centre** office to identify the amount.

Schedule 3 para 26

Christmas Bonus

- 8.041 A Christmas Bonus is paid each year in the week starting the first Monday in December. It is paid to people who are entitled to specified benefits, for example:
- Attendance Allowance;
  - Retirement Pension;
  - Widow's and War Widow's Pensions;
  - War Disablement Pension;

- Incapacity Benefit or Severe Disablement Pension;
- the Christmas bonus is fully disregarded in assessing the charge.

Schedule 3 para 22

Payments from any of the Macfarlane Trusts, The Fund or the Independent Living Funds

- 8.042 Payments from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Eileen Trust, the Fund, the Independent Living (Extension) Fund or the Independent Living (1993) Fund do not have to be declared if they are kept in a separate bank or building society account from the resident's other resources. All payments are fully disregarded. **It should be borne in mind that payments from the Independent (Extension and 1993) Living Funds should cease when someone enters residential accommodation.**

Schedule 3 para 24

**Dependency increases paid with certain benefits**

- 8.042A Dependency increases for adults can be paid with **Jobseekers Allowance**, Maternity Allowance, Incapacity Benefit, Severe Disablement Allowance, Retirement Pension, Invalid Care Allowance and Unemployability Supplement paid with Industrial Injuries Disablement Benefit. Child Dependency Increases can be paid with Jobseekers Allowance (where the beneficiary has reached pension age), Incapacity Benefit, Severe Disablement Allowance, Retirement Pension, Invalid Care Allowance and Unemployability Supplement (as above). Where the dependent does not live with the resident, the increase will only be payable if the resident pays over at least the amount of the increase to the dependent. Where the increase is being paid over to the dependent, the amount of the increase should be disregarded in full.

Schedule 3 para 28B

Gallantry awards

- 8.043 Gallantry awards are:

- Victoria Cross Annuities
- George Cross Annuities
- analogous awards eg one from another country

Schedule 3 para 8

These payments are fully disregarded.

Income frozen abroad

- 8.044 Income paid outside the UK which cannot be transferred to the UK should be fully disregarded so long as it continues to be frozen outside the UK.  
Schedule 3 para 16

Income in kind

- 8.045 Income in kind means income received in the form of food, clothing, cigarettes, etc. The value of such income is disregarded in full.  
Schedule 3 para 14

Payments made to trainees

- 8.045A Trainees on certain employment schemes may receive a training premium and reimbursement of travelling expenses. These should be fully disregarded. The actual training allowance should be taken into account.

War widows special payments

- 8.046 War widows' special payments are made to the widows of men who died from injuries or illness which resulted from service ending before 31 March 1973. The special payments are intended to compensate those widows who did not benefit from the amendments to the Armed Forces Pension Scheme. These payments, which are made under the legislation listed in Annex F, are fully disregarded.
- 8.047 A small number of widows do not qualify for the normal UK widows pension, even though their circumstances are such that they might expect to do so. In these cases, ex-gratia payments are made at the same rate as the appropriate war widow's benefit. Because they do not qualify for war widow's pensions under the normal rules, they are also excluded from the war widow's special payments scheme. The Secretary of State for Defence may therefore make special payments which are analogous to those listed above (paragraph 8.046). Such payments are fully disregarded in the assessment.
- 8.048 War widows special payments and analogous payments can normally be identified by the amount contained in the war widow's pension order book. In cases of doubt, contact the DSS War Pensions Office, at Norcross, Blackpool FY5 3TA (Tel: 0253-856123). They will need to know the name and reference number (shown on the pension book) of the war widow.

Schedule 3 para 25

Work expenses paid by employer

- 8.049 Where a person who is in paid employment receives a payment from the employer in respect of expenses which are incurred in the course of the employment that payment is fully disregarded. The payments must be for expenses incurred exclusively and necessarily in the course of work.

Schedule 3 para 3

- Expenses paid to voluntary workers
- 8.050 Where a person works for a charitable or voluntary body or as a volunteer, and receives no other payment as a result of the employment, any payment in respect of expenses which are actually incurred is fully disregarded.

Schedule 3 para 2

## Charitable and voluntary payments

### General

- 8.051 A charitable payment is not necessarily one made by a recognised charity, but may include payments made from charitable motives. A voluntary payment is one which the payer is under no legal obligation to make.

- 8.052 A charitable or voluntary payment which is not made regularly and is not due to be made regularly is treated as capital.

Reg 22(7)8.053

- 8.053 Payments which are made regularly or due to be made regularly are either:

- a) subject to a £20 disregard; or
- b) fully disregarded

### £20 disregard

- 8.054 Disregard £20 of any charitable or voluntary payment if it is intended and used for any item which is already covered by the local authority contract with the home, eg food or heating, subject to the overall disregard mentioned at 8.022.

- 8.055 Disregard £20 of any other payment which is not intended for any specific item subject to the overall disregard mentioned at 8.022.

Schedule 3 para 10(1)

### Full disregard

- 8.056 A payment which is intended and used to pay for a specific item which is not covered by the home's fees should be fully disregarded. For example, a payment to enable the resident to have his own telephone or television, or for a weekly outing which is not paid for under the terms of the contract.

Schedule 3 para 10(2)

### Payments to meet higher fees

- 8.057 Special rules apply to charitable or voluntary payments which are **intended and used** to meet a home's fees where the fees for that home are higher than the amount the local authority would normally pay. These payments are intended to allow the

resident some freedom of choice about where they wish to live. See paragraphs 8.018-8.019.

Schedule 3 para 29(6)

### **Income treated as capital**

8.058 Certain forms of income are treated as capital - see 6.038 to 6.045 for details

Reg 22

### **Notional Income**

8.059 A resident may be treated as having an income which he does not actually receive in a variety of situations. Such income is described as notional income and may be:

- a. income which is paid to the local authority by a third party under an agreement to contribute towards the fees of a home.
- b. income which would be available on application
- c. income which is due but has not yet been paid
- d. income which the resident has disposed of

Guidance on the factors to be considered is in the following paragraphs.

Reg 17

#### Actual and notional income

8.060 If the resident's actual income is such that the full charge is assessed as being paid it will not be necessary to consider the question of notional income.

#### Treatment of notional income

8.061 Notional income is calculated and treated in the same way as actual income.

### **Payments to the local authority by a resident or third party**

8.062 Where a third party is making a contribution towards the cost of the accommodation, the amount the third party is paying should be treated as the notional income of the resident. This is to ensure that the local authority takes the money into account when assessing the charge.

**8.062A** **Where a resident or third party is making top-up payments towards higher care home fees, the local authority has discretion to either collect the top-up payments and contract with the care home for the full amount, or leave the resident or third party to make the top-up payments direct to the care home. (See, 8.018-8.018G)**

**8.062B** Where a third party makes a payment directly to the local authority in respect of a resident's arrears of charges for residential accommodation it should not be treated

as the resident's notional income and will not therefore need to be taken into account as available towards the resident's current charge. In order to avoid the payment being regarded as the resident's capital (see 6.044A), it is recommended that, where a single payment or a series of payments are offered by a third party to help clear arrears, arrangements are made for the payment to go directly to the local authority.

8.063 The remaining forms of notional income depend on the local authority being satisfied that the resident has deprived himself of that income **in order to** reduce the charge payable for his accommodation.

### **Income available on application**

#### General

8.064 Subject to certain exemptions, income which the local authority is satisfied would be available to the resident if an application were made, but which has not yet been acquired, is to be treated as belonging to that resident.

Reg 17(2)

#### Amount of income

8.065 Payments of the following cannot be taken into account as notional income:

1. income payable under a discretionary trust
2. income payable under a trust derived from a payment made in consequence of a personal injury
3. **Working Families Tax Credit**
4. Disability Working Allowance

Also income which would be fully disregarded should not be included as notional income, for example Housing Benefit, **DLA** (mobility) and refund of income tax.

8.066 Income which is subject to the awarding authority's discretion, ie the resident has no right to payment shall also not be taken into account.

Reg 17(2)

8.067 Any potential entitlement to Severe Disablement Allowance should not be taken into account. This is because entitlement to this benefit is based on medical conditions which the local authority can not assume are satisfied.

Reg 17(2)

8.068 All other income should be considered. **Examples** of income which may be treated as belonging to the claimant are

1. unclaimed councillors attendance allowance
2. unclaimed Social Security benefits (but not Severe Disablement Allowance).
3. occupational pension not claimed.

#### Date taken into account

8.069 The income should be taken into account from the date it could be expected to be acquired if an application was made. In considering the earliest date that account can be taken of the income the local authority should:

1. assume the application was made on the date the local authority first became aware of the possible income; **and**
2. take into account any time limits which might limit the period the period of arrears.

Reg 17(2)

#### *Examples*

1. A resident aged 69 is not receiving a retirement pension to which he would have been entitled had he applied. The local authority becomes aware of the possible entitlement on 30/9/93. As retirement pension can only be backdated a year from date of claim the local authority only take it into account as income from 1/10/92.
2. The local authority become aware that a resident aged 64 is not receiving an occupational pension to which he would have been entitled from the age of 60. On his 65th birthday his former employers state that he will be paid all the pension due from age 60. The local authority should take the pension into account from age 60.

### **Personal Pensions and Retirement Annuity Contracts**

8.069A Where a resident, aged 60 or over, has a personal pension plan and he has not purchased an annuity, or arranged to draw the maximum income available from the plan, notional income should be assumed in the assessment of charges. This assumption should also apply to Retirement Annuity Contracts from which income can be derived from age 60 by the purchase of an annuity. The **Jobcentre Plus/ Pension Centre** will contact the pension provider for details of the income which could be payable where Income Support/**Minimum Income Guarantee** is claimed. For IS claimants LAs should liaise with the **Jobcentre Plus/ Pension Centre** to obtain details. Where no IS is claimed the LA will need to seek the resident's permission to approach the pension provider to obtain details **of the income** which could be received. This notional income should then be taken into account in the assessment of charges. The assumption of notional income from personal pensions and Retirement Annuity Contracts only applies to residents aged 60 or over.

Reg 17(2)

### **Income due but not paid**

8.070 Any income which is due to a resident, but which has not been paid, is to be treated as belonging to the resident. This does **not** apply to

1. income payable under a discretionary trust

2. income payable under a trust derived from a payment made in consequence of a personal injury
3. occupational pension which is not being paid, because:
  - a. the trustees or managers of the scheme have suspended or ceased payments due to insufficiency of resources, or
  - b. the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

Reg 17(2)

8.070A Examples of where to take into account income which is due to the resident, but which has not been paid are:

1. superannuation or other income due but not yet paid (for example, because of a strike by pay clerks)
2. pension or grant which has ceased temporarily, for example due to a postal strike.

### **Deprivation of income**

8.071 A resident is to be treated as possessing income of which he has deprived himself **for the purpose** of paying a reduced charge.

Reg 17(1)

#### *Example*

A resident is assessed as having to pay the full charge based on his income from retirement pension and occupational pension. When reviewing the charge the local authority find that he has sold his right to receive the occupational pension thereby reducing the charge he is assessed as having to pay. The local authority decides that this was done for the purpose of reducing the charge and the occupational pension was taken into account.

#### Meaning of deprive

8.072 A person will have deprived himself of a resource if, as a result of his own act, he ceases to possess that resource.

### **Questions for consideration**

8.073 Where the resident appears to have deprived himself of income the local authority should consider the following paragraphs:

#### Was it the resident's income?

8.074 Where a person, before he deprived himself of an income, was in receipt of that income it is reasonable to assume that the resource belonged to him. Sometimes there will be other evidence such as a letter or documentation which shows that the income was properly payable to the resident.

Has deprivation occurred?

8.075 Deprivation will have occurred if a person relinquishes, or transfers to another person, an income which:

1. he has been receiving or was due to receive **and**:
2. would have continued to receive had he not relinquished or transferred it.

8.076 It is up to the resident to prove that he no longer has the income. If he cannot prove that the income has been disposed of the local authority should treat the resident as still possessing the **actual** income.

Purpose of the disposal of income

8.077 There may have been more than one purpose of the disposal of income only one of which is to avoid a charge, or a lower charge. This may not be the resident's **main** motive but it must be a **significant** one.

Timing of the disposal of income

8.078 Consideration should be given to the timing of the disposal of the asset when deciding whether the purpose of disposing of the asset was to avoid a charge for the accommodation.

8.079 The local authority should make a judgement as to the purpose of the disposal of income **only** after balancing all the person's motives, explicit and implicit, and the timing behind the action. The local authority should bear in mind, however, that deprivation can be considered for resources disposed of at any time. The 6 month restriction only applies to using the provisions of section 21 of the Health and Social Services and Social Adjudication Act 1983.

Conversion of income to a capital asset

8.080 Where, for the purposes of paying a reduced charge or no charge, the right to receive an income resource has been sold, and therefore converted from income to a capital asset, the local authority should consider taking account of:

1. the amount of the former income resource **or**
2. if the newly acquired capital gives rise to a tariff income or an increase in tariff income, the **difference** between the former income resource and the tariff income, or the increase in tariff income, arising from that capital asset.

### *Examples*

1. A resident sold the right to receive an income under an annuity of £10 per week for £2800. Having no other capital the £2800 did not affect the resident's assessment of charges. The local authority decided that the resident sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as receiving £10 per week notional income.

2. A resident sold the right to receive income under an annuity of £10 per week for £2,800. The resident's other capital was £8,550 and so the total capital of £11,350 produced a tariff income of £6 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as notionally receiving the £4 difference between the tariff income and the original £10, per week from the annuity.

3. A resident sold the right to receive income under an annuity of £10 per week for £2,000. The resident's other capital of £10,100 produced a tariff income of £1 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing the assessed charge. An extra tariff income of £8 would have resulted from the sale of the right to receive an income (ie £2,000 ÷ £250). A notional income of £2 per week was calculated by deducting the increase in tariff income (£8) from the original income payable under the annuity (£10).

### **Deprivation decided**

8.081 If it is decided that the resident has disposed of income **in order to** avoid a charge or to reduce the charge payable, the local authority will need to assess the charge payable using the resident's notional income.

Reg 17(1)

8.082 If the resident is unable to pay the charge assessed using the notional income, the local authority should consider whether the provisions of the Health and Social Services and Social Security Adjudications Act 1983 can be used to transfer the liability for that part of the charges assessed as a result of the notional income to the person to whom the income has been passed. (see separate guidance).

## SECTION 9 - EARNINGS

### What are earnings?

#### General

9.001 Earnings consist of any remuneration or profit derived from employment. This will include such things as:

bonus or commission

payments in lieu of notice

holiday pay except any payable more than four weeks after the termination or interruption of employment

any payment by way of a retainer

any payment made by the person's employer in respect of any expenses **not** wholly, exclusively and necessarily incurred in the performance of the duties of employment. eg travelling expenses incurred by the employee between his home and the place of employment.

Regs 10 and 13

9.002 Earnings do **not** include

any payment in kind

any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment

any occupational pension

#### Gross earnings

9.003 "Gross earnings" means the amount of earnings **before** any deductions are made, for example tax, National Insurance contributions, pension contributions and trade union subscriptions.

### Net earnings of employed earners

9.004 To calculate the amount of earnings to be considered in the assessment, deduct from the gross earnings:

the amount of income tax the resident pays or is liable to pay, or which is deducted by the employer

the amount of the deductions made by the employer in respect of Class 1 National Insurance contributions

half of any sum paid to an occupational or personal pension scheme which is:

Reg 14

Occupational pension

- 9.005 An occupational pension scheme is one which provides benefits payable on termination of service, or on death or retirement.

Personal pension

- 9.006 A personal pension is one which provides benefits payable on death or retirement, but which is not directly related to any previous employment.

Statutory Sick Pay, Statutory Maternity Pay, **Statutory Adoption Pay and Statutory Paternity Pay**

- 9.007 The amount of SSP and SMP, **Statutory Adoption Pay and Statutory Paternity Pay** to be taken into account is the gross amount less:

- a. any income tax paid;
- b. any National Insurance employees contributions paid; and
- c. half of any sum paid by the resident as a contribution towards an occupational or personal pension scheme.

Details of these payments should be obtained from the resident in the first instance but, in the event of any queries the local authority should ask the employer for clarification.

[Schedule 9 para 4 IS Regs/Schedule 2 para 3 Assessment of Resources Regs]

**Period over which earnings should be taken into account**

Payments for regular periods

- 9.008 Where the earnings are paid at regular intervals the weekly amount should be calculated as follows:

- a. earnings paid for periods of a week or less should be taken into account for one week.
- b. earnings paid for a calendar month should be multiplied by 12 and divided by 52 to arrive at the weekly amount.
- c. earnings paid annually should be divided by 52.

d. earnings paid at other regular intervals should be multiplied by 7 and divided by the number of days for which the payment is made. Reg 18(1)(a)

Payments which are not for fixed periods

9.009 Where a resident who works as an employed earner receives payments which cannot be attributed to a set period the payments should be taken into account as follows:

Income Support/Minimum Income Guarantee in payment

9.010 Where a resident, who is getting Income Support/ **Minimum Income Guarantee**, receives a payment of earnings which is not for a set period the **Jobcentre Plus/ Pension Centre** Adjudication Officer will calculate a number of weeks for which Income Support/ **Minimum Income Guarantee** will be withdrawn. The local authority should work out the same number of weeks by dividing the payment by the amount of Income Support/ **Minimum Income Guarantee** normally in payment plus any disregards which would be applicable if the payment was a regular payment of earnings. The balance of the payment (if any) should be taken into account in the assessment in the final week.

Reg 18(2)

**Example**

A resident receives a payment totalling £800.

He had been receiving Income Support of £130 per week and would have been entitled to a weekly disregard of £20.

The local authority should divide the £800 by the amount of Income Support in payment plus the disregard (£130 + £20 =£150.)  $£800 \div £150 = 5.33$

The £800 should be taken into account in the assessment for a period of 5 weeks at the rate of £150 (the Income Support previously in payment plus the disregard)

In the 6th week the balance of the payment should be taken into account (ie £800 - (5x£150) = £50)

In assessing the charge over these 6 weeks the LA should remember that Income Support will be withdrawn for the first 5 weeks and will be paid at a reduced rate for the 6th week.

Income Support not in payment

9.011 Where Income Support is not in payment and a resident receives a payment of earnings which is not for a fixed period, the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard charge and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard charge). If

this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.

Reg 18(1)(b)

### Example

A resident is paying a charge (**A**) of £120, the standard charge (**B**) is £250

He receives a payment (**C**) of £750, in respect of which he would be entitled to a £20 disregard if it was paid weekly.

The number of weeks over which the payment is to be taken into account is calculated as follows:

$$C \div (B - A) = 5.77 \text{ weeks}$$

The resident pays the standard charge of £250 less the £20 disregard for 5 weeks (ie he pays £230 which is £110 more than he was paying. He therefore has £100 of the £750 left to be taken into account in week 6, less the £20 disregard.

### Net earnings of self-employed earners

9.012 To calculate the amount of net earnings to be considered in the assessment, deduct from the gross earnings any relevant outgoings, liabilities or expenses **such as**:

- the amount of income tax the resident pays or is liable to pay
- the amount of National Insurance the resident is liable to pay
- half of any sum paid to a personal pension scheme
- stock purchases
- transport costs, wholly related to the business
- stationery
- advertising

Reg 11

#### Assessing the weekly net earnings of self-employed earners

9.013 Where the resident has recently started self-employment or where circumstances result in a change in the normal pattern of business, the weekly earnings should be calculated by averaging the earnings over whatever period is going to result in the fairest assessment of earnings for the resident.

- 9.014 In all other cases the weekly earnings should generally be calculated by averaging the net earnings over a period of a year. This means that the annual income will be divided by 365 (or 366 in a leap year) and multiplied by 7. Reg 12(1)

Royalties or fees from copyright

- 9.015 Where the resident receives royalties or fees from copyright irregularly, the period of weeks over which the payment should be taken into account is as follows.

Income Support in payment

- 9.016 Where a resident, who is getting Income Support, receives a payment of royalties or fees from copyright which is not for a set period the **Jobcentre Plus/ Pension Centre** Adjudication Officer will calculate a number of weeks for which Income Support will be withdrawn. The local authority should work out the same number of weeks by dividing the payment by the amount of Income Support normally in payment plus any disregards which would be applicable if the payment was a regular payment of earnings. The balance of the payment (if any) should be taken into account in the assessment in the final week.

Reg 18(2)

**Example**

A resident receives a payment totalling £800.

He had been receiving Income Support of £130 per week and would have been entitled to a weekly disregard of £20.

The LA should divide the £800 by the amount of Income Support in payment plus the disregard (£130 + £20 =£150.)  $£800 \div £150 = 5.33$

The £800 should be taken into account in the assessment for a period of 5 weeks at the rate of £150 (the Income Support previously in payment plus the disregard)

In the 6th week the balance of the payment should be taken into account (ie £800 - (5x£150) =£50)

In assessing the charge over these 6 weeks the LA should remember that Income Support will be withdrawn for the first 5 weeks and will be paid at a reduced rate for the 6th week.

Income Support not in payment

- 9.017 Where Income Support is not in payment and a resident receives a payment of royalties or fees from copyright which is not for a fixed period, the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard charge and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by

the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.

Reg 18(1)(b)

### Example

A resident is paying a charge (A) of £120, the standard charge (B) is £250

He receives a payment (C) of £750, in respect of which he would be entitled to a £20 disregard if it was paid weekly.

The number of weeks over which the payment is to be taken into account is calculated as follows:

$$C \div (B - A) = 5.77 \text{ weeks}$$

The resident pays the standard charge of £250 less the £20 disregard for 5 weeks (ie he pays £230 which is £110 more than he was paying).

At the end of five weeks he has used up £550 (5 x £110) and has been allowed to keep £100 (5 x £20).

He therefore has £100 of the £750 left to be taken into account in week 6, less the £20 disregard.

### Disregards

9.018 The amount of earnings to be taken into account in the assessment is the net amount calculated in accordance with paragraphs 9.001 to 9.017 above, less the appropriate disregard.

9.019 Disregard £5 of the net weekly earnings unless the resident qualifies for a different disregard under paragraph 9.019 to 9.022 or a discretionary disregard under paragraph 2.004.

Schedule 2 para 4

#### People entitled to a £20 disregard

9.020 Disregard £20 of the net weekly earnings if the resident:

a) receives Income Support which includes a disability premium a carer's premium;

**or:**

b) is under 60 and:

(i) receives one of the following benefits:

- Disability Living Allowance (mobility or care components at any rate)
- Disability Working Allowance
- Mobility supplement
- Severe Disablement Allowance

**or:**

(ii) has an invalid carriage or other vehicle provided under:

- section 46 of the National Health Service (Scotland) Act 1978; or
- in England and Wales, under section 5(2)(a) of the National Health Service Act 1977

**or:**

(iii) receives a grant under:

- para section 46 of the National Health Service (Scotland) Act 1978; or
- in England and Wales, under paragraph 2 of Schedule 2 of the National Health Service Act 1977

**or:**

iv) is registered blind in a register maintained by or behalf of a local authority

**or:**

(v) has produced medical evidence of incapacity in support of a claim for:

- Incapacity Benefit; or
- Severe Disablement Allowance

for a continuous period of not less than 28 weeks.

**or:**

(vi) has ceased receiving Attendance Allowance or Disability Allowance solely because he has been in residential accommodation for more than 4 weeks.

**or:**

c) is over 60; **and**

satisfied one of conditions in b) above before reaching 60; **and**

has worked continuously since reaching the age of 60

**or:**

d) is a lone parent.

Schedule 2 para 3

People who have ceased or interrupted employment

9.021 In the case of a resident who has been employed as an employed earner and whose employment has ended or been interrupted, any earnings paid, or due to be paid in respect of that employment shall be fully disregarded.

Schedule 2 para 1

People who have ceased self-employment

9.022 In the case of a resident who has been self-employed and whose self-employment has ended, any earnings, apart from any fees from copyright or royalties, paid or due to be paid after the self-employment has ceased, shall be fully disregarded.

Schedule 2 para 2

Earnings frozen abroad

9.023 Any earnings derived from employment which are payable in a country outside the UK, the transfer of which to the UK is prohibited, shall be fully disregarded.

Schedule 3 para 15

## SECTION 10 - TRUST FUNDS

This section does not apply to the Macfarlane Trust, the Macfarlane (Special Payments) Trust the Macfarlane (Special Payments) (No 2) Trust, the Eileen Trust, the Fund, the Independent Living (Extension) Fund or the Independent Living (1993) Fund. See paragraph 8.042.

### What is a trust?

10.001 A trust is an arrangement for one person or a group of people (the trustee(s)) to hold and administer capital in the form of money or property for the benefit of another person or group of people (the beneficiary(ies)).

10.002 Examples of capital which might be held on trust are:

- money awarded by a court as compensation
- proceeds of a separation or divorce settlement
- money set aside by parents to ensure a regular income for a person who is unable to support himself by reason of illness or disability
- a bequest under a will

### Trustees

10.003 Trustees may be:

- a professional person such as a solicitor
- the parents of a beneficiary who cannot act for himself
- any other responsible person, perhaps appointed under the terms of a will.

10.004 Trustees' powers are governed by:

- a) the terms of any trust deed;
- b) the common law in Scotland and the law of equity in England and Wales; and
- c) the Trustee Act or the Administration of Estates Act 1925 in England and Wales or in Scotland, the Trusts (Scotland) Act 1921 and 1961 and the Trustee Investments Act 1961.

### Identifying a trust

10.005 A trust is usually set up by means of a trust deed. The deed sets out the terms of the trust, and will contain details of the beneficiaries, the amount by which they should

benefit and when payment or payments should be made. The trust deed could be in the form of a will or Deed of Settlement.

### **Treatment of Trusts**

10.006 A resident's interest in a trust could take one of two forms:

- a) he has absolute entitlement to capital or income from the trust (10.008-10.018); or
- b) the trustees have discretion to make payments of capital or income (10.019-10.022).

#### Information needed

10.007 Where a resident is a beneficiary under a trust, find out from the trustees or from the trust document whether:

- a) the beneficiary is absolutely entitled to money from the trust;
- b) the trustees have discretion to make payments; and
- c) the trust is in consequence of personal injury.

### **Absolute entitlement**

10.008 Absolute entitlement means that the beneficiary has an absolute vested interest in capital held on trust (or in a share of capital held on trust), and could call for the whole of the capital and income to be transferred to him at any time. This also applies where the beneficiary is incapable of managing his affairs.

#### Information needed

10.009 Where the beneficiary is absolutely entitled to money from the trust (ie has an unconditional right), find out whether he is entitled to:

- a) any capital held in trust; and
- b) any income produced by the trust assets.

#### Absolute entitlement to capital

10.010 If the beneficiary is absolutely entitled to capital, find out the value of the capital. Where a number of beneficiaries have a shared interest in a trust, divide the total value equally between the joint beneficiaries and treat the resident as owning an equal share. This method of treatment avoids administrative difficulties. Once the resident is in sole possession of his **actual** share, treat him as owning that actual amount.

- 10.011 Where the resident is not in possession of capital to which he has absolute entitlement, but the capital would become available to him upon application being made, treat him as possessing an actual capital asset. See Section 6 (Capital).
- 10.012 Some trusts provide for the beneficiary to become absolutely entitled to the trust capital on a specified date, for example his 21st or 25th birthday. In these cases the beneficiary has a contingent interest. Once the contingency is satisfied, the beneficiary becomes absolutely entitled to the capital.
- 10.013 The capital asset to be taken into account is the market value, after making an allowance for the value of the underlying assets. It will probably be necessary to obtain written evidence of the value of the trust fund. Where there would be expenses of sale, deduct 10% of the value.
- 10.014 Where the assessing officer and the resident agree that the value of the resident's total capital, including the value of the trust capital, is:
- a) more than £18,500; or
  - b) less than £11,500

it will not be necessary to obtain a precise valuation of the trust

#### Absolute entitlement to income

- 10.015 Where a trust deed directs that a beneficiary is to receive **income** produced by the trust capital, the beneficiary has absolute entitlement to the income. The right to receive that income has a value, and the value of the right to receive income is a capital asset. That capital asset is fully disregarded for assessment purposes. (See paragraph 10.017 for treatment of the income).
- Schedule 4 para 13
- 10.016 A person who has a contingent interest in capital (as in paragraph 10.012) becomes absolutely entitled to receive the income from the capital on his 18th birthday, even where the contingency affecting the capital has not yet been satisfied. The value of the right to receive income is fully disregarded as in paragraph 10.015.
- 10.017 Where a person has absolute entitlement to income from a trust, the income he receives, or which would become available to him on an application being made, should be taken into account in full in the assessment. Where the resident does not receive income to which he has absolute entitlement, but the income would become available to him upon application being made, he should be treated as possessing that income as an actual income. (See Section 8 - Income). In order to treat the income as an actual resource, you must be able to identify the income which should be paid, and to establish that there is nothing which prevents payments being made, such as a legal charge against the fund.

Reg 17(1)

### Absolute entitlement to capital and income

- 10.018 Where the beneficiary has absolute entitlement to capital **and** income, and is being treated as possessing the capital sum, the income derived from the capital should be treated as capital, and not taken into account as income in the assessment.

Reg 22(4)

### **Discretionary trusts**

#### Information needed

- 10.019 If the trustees have discretion to make payments of capital or income, find out whether any payments are made, and if so:
- a) how much is paid;
  - b) how often payments are made; and
  - c) to whom the payments are made.

#### Treatment of discretionary payments

- 10.020 Where payments are made wholly at the discretion of the trustees and there is no absolute entitlement either to capital or income, only take into account payments which are actually made. Do not assume notional capital or income from a discretionary trust (see Sections 8 (Income) and 6 (Capital)).
- 10.021 Payments from a discretionary trust are voluntary payments. Treat them in accordance with the normal rules for the treatment of voluntary payments (paragraphs 8.051 to 8.057).
- 10.022 Payments from a charitable trust which promotes a public benefit are always discretionary payments. Treat them in accordance with the normal rules for the treatment of charitable payments (paragraphs 8.051 to 8.057).

### **Compensation for personal injury**

#### Information needed

- 10.023 Obtain confirmation that the capital held in trust is a lump sum payment of:
- compensation for injury or death (including vaccine damage)
  - damages under the Fatal Accidents Act
- 10.024 Find out whether the beneficiary receives any income from the capital held in trust, and if so:
- a) how much is paid; and

b) how often it is paid

Treatment of capital

- 10.025 Where the capital held in trust is in consequence of personal injury, both the capital and the capital value of any right to receive income are fully disregarded.  
Schedule 4 para 10

Treatment of income

- 10.026 Payments of income from capital held in trust which is in consequence of personal injury is taken into account in full in the assessment for as long as the capital continues to be disregarded.  
Schedule 4 para 10

## SECTION 11 - LIABILITY OF RELATIVES

### General

- 11.001 Under Section 42 of the National Assistance Act 1948, which applies in Scotland by virtue of Section 87(3) of the Social Work (Scotland) Act 1968, a man is liable to maintain his wife and a woman is liable to maintain her husband. This means that where a person's accommodation is provided at the public expense by a local authority, the local authority may ask the spouse (ie the liable relative or "LR") to refund all or part of that expenditure.
- 11.002 Unmarried couples are not legally liable to maintain one another even though they live together as husband and wife.
- 11.003 Married couples are also liable to maintain one another under Social Security legislation. This means that where Income Support/**Minimum Income Guarantee** is in payment to a resident, if the local authority pursue maintenance and it is paid, the DWP will merely reduce the Income Support/**Minimum Income Guarantee** which is in payment so reducing the amount the local authority can charge the resident back down to the original amount. Therefore, it is not worth the local authority pursuing maintenance where Income Support/**Minimum Income Guarantee** is in payment to the resident.
- 11.003A If DWP has not obtained a contribution and they are not planning to approach the LR:
- make a calculation in the normal manner
  - take into account the fact that many of these cases involve pensioners, and
  - consider the cost effectiveness of any action to pursue liability.

Take a reasonable approach when dealing with these cases and avoid causing distress to the couple.

- 11.004 Where it is evident that the LR is not in a position to make a contribution, eg where the partner receives Income Support, no action is necessary.
- 11.004A Local authorities' standard policies on liable relatives contributions should be put in writing and discussed clearly with married partners who are being asked for contributions.
- 11.004B In seeking liable relatives contributions from carers, local authorities may wish to exercise discretion and sensitivity. Some of these carers may struggle, as a result, to maintain an adequate standard of living, and may only have their state pension.

### Seeking Payments from a Liable Relative

- 11.005 Where it appears to be appropriate to pursue liability, local authorities may ask a spouse to refund part or all of the authority's expenditure in providing residential

accommodation for his/her husband or wife. Local authorities should note that this does not mean that an authority can demand that a spouse provide details of his/her resources. Local authorities should not use assessment forms which require information about the means of the spouse. Local authorities should use tact in explaining to residents and spouses the legal liability to maintain and point out that the extent of that liability is best considered in the light of the spouses' resources.

11.005A A local authority can negotiate a liable relative contribution even if the liable relative does not wish to supply details of his or her resources. In the absence of details the local authority should not charge the partner for any of the cost of the care unless negotiation has taken place.

11.006 In practical terms local authorities may wish to proceed as follows:

- i. assess the ability of the resident to pay based solely on his/her own resources. This establishes the charge the resident is able to pay without assistance from the liable relative;
- ii. if the resident is unable to pay for his/her accommodation at the standard rate, the local authority decides whether it is worth pursuing the spouse for maintenance;
- iii. if it is worth pursuing the spouse for maintenance, consider in each case what would be "appropriate" for the spouse to pay by way of maintenance. This will involve discussion and negotiation with the spouse, and will be determined to a large extent by his/her financial circumstances in relation to his/her expenditure and normal standard of living. In the Department's view, it would not be appropriate, for example, to necessarily expect spouses to reduce their resources to Income Support levels in order to pay maintenance;
- iv. ultimately, only the courts can decide what is an "appropriate" amount of maintenance to pay. When negotiating maintenance payments with spouses the local authority should therefore consider whether the amount being sought would be similar to that decided by the courts. Local authorities should consider court action as a last resort.

11.006A The assessments and discussions about a liable relative's contribution should be timely, and should not delay the resident's admission to residential care and immediate funding. If negotiation with the married partner is still continuing on admission of the resident, the local authority should make contributory payments in the interim. If appropriate, local authorities should secure retrospective contributions from the married partner.

11.006B The income and expenditure of the spouse should be taken into account when a liable relative's contribution is being sought. The liable relative should not experience hardship as a result. For example the spouse should be left with enough income to be able to live on, which means being left with income above means tested benefits such as income support, housing benefit, council tax benefit and tax credits. In addition, reasonable expenses should be allowed for the partner such as

for visits to spouse in case, expenses to maintain the home and any other expenses arising from serious or prolonged illness, infirmity or disability.

### **Liable relative payments**

11.007 A liable relative payment (LRP) is:

- most payments made by a person who is liable under the National Assistance Act to maintain a resident; and
- certain payments made by a person who is **not** liable to maintain the resident - in particular, payments from a divorced spouse. These would normally be payments made under a Court Order.

#### Payments not treated as liable relative payments (LRP)

11.008 Certain payments are not treated as LRPs, although they are made by a liable relative. These are:

- certain payments made under a separation or divorce settlement (11.009)
- the first £250 of payments made as a gift (11.010)
- payments made to a third party in respect of the resident if it is unreasonable to take it into account (11.011)
- payments made to the resident in respect of a third party if it is unreasonable to take it into account (11.013)
- any Child Support Maintenance payment (see 6.027, 8.005 and 8.038).

#### Payments under separation or divorce settlement

11.009 Payments which arise from a property settlement following a separation or divorce are treated as capital, not LRPs. These payments represent the resident's share of the financial assets of the couple, eg the resident's share of the value of the matrimonial home.

Reg 29

#### Gifts from liable relatives

11.010 The first £250 of any payment made as a gift is treated as capital. Any balance over £250 is taken into account as a non-periodical LRP (11.020). If two or more payments are made in one 52-week period (starting on the date the first payment is made), only the first £250 paid during that period is treated as capital. Any payment over £250 in that 52-week period is treated as a non-periodical payment.

Reg 29

#### *Example*

A resident receives a gift from his wife of £300 on his birthday, 12 September 1993. £250 is treated as capital, and £50 treated as an LRP.

His wife gives him £150 for Christmas 1993. The whole amount is treated as an LRP.

On 9 September 1994 his wife gives him £200 for his birthday. The whole amount is treated as an LRP. The 52-week period ends on 11 September 1994.

His wife gives him £200 for Christmas on 15 December 1994. The whole amount is treated as capital and a new 52-week period begins on 15 December. He receives £100 on 15 April 1995. £50 is treated as capital and £50 as an LRP. Any further gifts received during the period 15 December 1994 to 14 December 1995 are treated as LRPs.

#### Payments to a third party in respect of the resident

11.011 These payments are treated as LRPs **unless there are grounds for thinking it would be unreasonable to do so**. It might, for example, be unreasonable to treat the following as LRPs:

- payments direct to a TV rental company for the resident to have his own television;
- payments to Telecom to pay a telephone bill
- payments to a mail order company for clothing

11.012 Where it is decided that it would be unreasonable to treat a payment as an LRP, treat it as a voluntary payment in accordance with 8.051 to 8.057.

Reg 29

#### Payments to the resident in respect of a third party

11.013 These payments are treated as LRPs unless it appears unreasonable to treat them as possessed by the resident, eg.:

- maintenance payments in respect of a child paid to the resident to pass on to that child or the person caring for the child;
- payments intended for the maintenance of a property occupied by an elderly relative

11.014 In these cases, decide whether the payment should be treated as possessed by the resident or by the third party. If it is treated as possessed by the resident, take it to account as an LRP. If it is treated as possessed by the third party, it will not fall to be assessed as the resident's income.

Reg 29

### **Treatment of LRPs**

11.015 An LRP is either a periodical payment or a non-periodical payment.

Periodical payments

11.016 A periodical payment is one which is made or due to be made at regular intervals. Such payments will normally be made under:

- a) a court order; or
- b) an agreement between the LR and:
  - i) the resident;
  - ii) **DWP**; or
  - iii) the local authority.

11.017 Payments which are made weekly are taken into account in full at the weekly rate of the payment.

11.018 Where a payment is due to be made at intervals other than a week, calculate the weekly amount, eg calendar monthly payment - multiply by 12 and divide by 52.

11.019 Where a payment is due to be made at a weekly amount, but is paid in a lump sum at irregular intervals, divide the lump sum by the weekly amount which should be paid and take it into account at the weekly rate for the appropriate number of weeks.

Reg 31

Non-periodical payments

11.020 Where the resident receives a payment from a liable relative which is not made for an identifiable period the local authority should calculate the period over which to take the payment into account as follows.

Income Support/**Minimum Income Guarantee** in payment

11.021 Where a resident, who is getting Income Support/**Minimum Income Guarantee**, receives a LRP which is not for a set period the **Jobcentre Plus/ Pension Centre** Adjudication Officer will calculate a number of weeks for which Income Support/**Minimum Income Guarantee** will be withdrawn. The local authority should work out the same number of weeks by dividing the payment by the amount of Income Support/**Minimum Income Guarantee** normally in payment plus any disregards which would be applicable if the payment was a regular payment of earnings. The balance of the payment (if any) should be taken into account in the assessment in the final week.

Reg 18(2)

*Example*

A resident receives a payment totalling £750.

He had been receiving Income Support/ **Minimum Income Guarantee** of £130 per week and would have been entitled to a weekly disregard of £15.

The local authority should divide the £750 by the amount of Income Support/**Minimum Income Guarantee** in payment plus the disregard (£130 + £15 = £145)  $£750 \div £145 = 5.17$

The £750 should be taken into account in the assessment for a period of 5 weeks at the rate of £145 (the Income Support/**Minimum Income Guarantee** previously in payment plus the disregard).

In the 6th week the balance of the payment should be taken into account (ie £750 - (5 x £145) = £25).

In assessing the charge over these 6 weeks the local authority should remember that Income Support/**Minimum Income Guarantee** will be withdrawn for the first 5 weeks and will be paid at a reduced rate for the 6th week.

#### Income Support/**Minimum Income Guarantee** not in payment

- 11.022 Where Income Support/**Minimum Income Guarantee** is not in payment and a resident receives a payment for a period which cannot be identified (and this is the only payment received from an LR) the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard charge and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.

#### *Example*

A resident is paying a charge (A) of £120, the standard charge (B) is £250

He receives a payment (C) of £750

The number of weeks over which the payment should be taken into account is calculated as follows:

$$C \div (B - A) = 5.77 \text{ weeks}$$

The resident therefore pays the standard charge of £250 for 5 weeks.

In week 6 the resident will have £100 left from the payment (having used £130 (B-A) per week for the 5 weeks to meet the extra charge). This should be used to calculate the charge for this week.

#### Periodical and non periodical payments

- 11.023 Where a resident receives a periodical and a non periodical payment at the same time and the weekly amount of the periodical payment is less than the difference between the standard charge and the amount he would be liable to pay if he did not receive any payments from the LR, the payment should be taken into account for a period calculated by dividing the sum received by the difference between the standard charge and the amount the resident had previously been paying.

*Example*

A resident receives a payment of £500 (A) from an LR.

He normally receives a weekly payment of £50 (B) from the LR.

He has other weekly income of £75 (C)

The standard charge for the accommodation is £250 (D)

The Personal Expenses Allowance is (eg) £15 (E)

The resident normally pays £110 (F)

If no weekly LR payment was received the resident would pay £60 (C-E)

The normal weekly amount of LRP is less than this so the calculation for the number of weeks over which the non-periodical payment is to be taken into account is as follows:

$$A \div (D - F) = 3.57 \text{ weeks.}$$

So, the resident pays the full charge for 3 weeks. This will have used up £420 of the payment (the difference between what he was paying and the standard charge (£140) for 3 weeks).

In the 4th week the resident will have £80 left of the LRP. This will be taken into account along with his other income in the assessment of his charge in the final week.

- 11.024 Where the weekly LRP is equal to or more than the difference between the standard charge and the charge the resident would be assessed as paying if he received no LRPs, then the non-periodical payment should be treated as capital.

Reg 34(1)

*For example*

A resident receives a non-periodical payment of £500

He normally receives a weekly LRP £100

He receives other income of £75

The standard charge is £250

The Personal Expenses Allowance is (eg) £15

The resident normally pays a charge of £160

If there was no weekly LRP the resident would pay a charge £60

As the weekly LRP is more than the charge that would be made if the resident did not receive the LRP, the £500 non-periodical payment is treated as capital.

- 11.025 If an amount has been treated as capital in 11.024 and the periodical LRP later ceases to be paid, the non-periodical payment ceases to be treated as capital and the weekly income should be calculated in accordance with 11.021 or 11.022 above.

## SECTION 12 STUDENTS

### General

- 12.001 Students may have different types of income which will be treated in different ways.

### Student Support

#### Sources of student income

- 12.002 The responsibility for granting assistance to students undertaking courses of further or higher education in Scotland is divided between The Student Awards Agency for Scotland, the incorporated Scottish Colleges and education authorities of the Regional and Islands Councils, depending on the level of course. The Student Awards Agency for Scotland is generally responsible for the administration of support for full-time courses of **higher** education at Higher National Certificate, Higher National Diploma and first degree or comparable levels, plus certain categories of postgraduate courses. Eligible full-time higher education students studying in Scotland are entitled to free tuition and their living cost support is mainly provided through means-tested student loans with supplementary grants (including Dependants' Grant, Lone Parents' Grant and Travelling Expenses) for those with additional needs are also available. Young students from low income families who enter full-time higher education in 2001/2002 or later, may have part of their loan replaced with a Young Students' Bursary. The maximum payable is £2,000 annually, dependant on the level of family income. Awards for students on non advanced education courses are given at the discretion of the incorporated colleges or education authorities. The incorporated college network receives funds and guidance from the Scottish Further Education Funding Council (SFEFC) for allocating student funds and awarding student bursaries. Unlike SAAS, a bursary includes an allowance for study expenses. In both cases, the support available will include amounts for various specific purposes, such as personal maintenance, travelling expenses and books.

#### Period over which student support should be taken into account

- 12.003 Information on the period covered by the student support available can be obtained from The Student Awards Agency for Scotland or the incorporated colleges or the education authority as appropriate.
- a. Where the grant is payable for the period of non-advanced study, the amount to be taken into account should be divided equally over the number of weeks in the period of study.
  - b. The Young Students' Bursary covers the period of study. It should be divided equally among the number of weeks in the period of study.
  - c. The non-repayable supplementary grants normally cover a period of 52 weeks, except for Two Homes Grant which covers the period of

study. The amount to be taken into account should be divided equally over a 52 week period.

- d. Where the grant is payable for some other period, the amount to be taken into account should be divided equally over the number of weeks for which the grant has been paid.

Reg 36(2)

**Note** Non-repayable supplementary grants which are awarded by The Student Awards Agency for Scotland under the Students' Allowances (Scotland) Regulations **will** include grant payment for the Christmas and Easter vacations. However, incorporated colleges or education authority grants may or may not include payment for those vacations.

#### Assessed contribution

- 12.004 The Student Awards Agency for Scotland or the incorporated college or the education authority may decide that the student, their parents', spouse (or partner in the case of a college or education bursary) should make a contribution to the student's support. Such a contribution would be assessed on the basis of their income, that of the parent, spouse or partner, as appropriate, and the actual student support payable will be reduced by the amount of assessed contribution.

Reg 35

#### Amount of student support

- 12.005 The amount of student support to be taken into account should be the amount of Young Students' Bursary and loan, plus any non-repayable supplementary grant included in the total support package for students taking full-time higher education courses. This figure should be obtained from The Student Awards Agency for Scotland each year. For all other courses, the living cost support element from the grant should be obtained from the incorporated college or education authority each year. Any other part of the grant should be ignored.

Reg 36(1)

- 12.006 The total living cost support available includes the student's, parents', spouse or partner's contribution, as appropriate.

Reg 35

#### **Student loans**

- 12.012 Student loans for full-time higher education students who entered higher education in session 1998/1999 or later are administered by the Student Awards Agency for Scotland and are paid out of money made available by the Scottish Executive.

### Eligibility for student loans

- 12.013 Loans are generally available to full-time students on higher education courses lasting at least one academic year which are **below** postgraduate level (with the exception of the Postgraduate Certificate in Education and Postgraduate Diploma in Community Education) **but above**
- a) GCE Advanced level;
  - b) Scottish Higher level; or
  - c) BTEC or ScotVEC national diploma.

### Maximum student loans

- 12.014 The amount for which the student is eligible is always the maximum according to his circumstances. If the student has taken none, or only part, of the loan this will be by his own choice. If the student is eligible for a loan (see 12.013 above) it will be taken into account whether or not the student has taken the loan.

Reg 39

- 12.015 The maximum amount of student loan will depend on
1. where the student is studying (London, elsewhere or living at home);
  2. the number of weeks studied;
  3. whether the student has reached the final year of the course

The maximum student loan can be found by asking The Student Awards Agency for Scotland.

### Calculation of weekly income from student loans

- 12.016 The weekly amount of loan income should be calculated by dividing the appropriate maximum loan
1. if the student is in the final academic year of the course, or if the course is only one year's duration – by the number of weeks between the start of the academic year (1 January, 1 April or 1 August as appropriate) and the last day of course.
  2. in any other case - by 48 weeks (the 12 months from 1 January, 1 April or 1 August) for which the loan is payable

Reg 39

### Amount to be disregarded

- 12.017 Up to £10 of the weekly income from a student loan should be disregarded

Reg 39

## **Hardship Funds (previously know as Access funds)**

12.018 Hardship funds provided by the Scottish Executive are intended for the relief of hardship, where a student might be prevented by financial considerations from starting or completing a course. The discretionary funds are administered by the educational institutions such as universities and colleges and payments may be made by lump sum, regular weekly cash payments, or by payment in kind. Payments can be made to third parties.

### Treatment of payments

12.019 Payments made at regular intervals should be treated as a voluntary payment and be subjected to a £20 disregard.

Reg 40(1)

12.020 Payments paid, or due to be paid, at irregular intervals should be treated as capital.

Reg 40(2)

### **SECTION 13 - TRANSITIONAL PROVISIONS**

From April 1996 all residents who were paying a protected amount calculated under the Transitional Provisions should have their charges assessed under the current rules.

Local authorities should keep archive copies of Transitional Provisions guidance to refer to should any resident query his past assessments.

**SOCIAL SECURITY BENEFITS RATES**

	<b>RATES</b>	<b>RATES</b>
(Weekly rates unless otherwise shown)	<b>2002</b>	<b>2003</b>
<b><u>RATES OF PERSONAL EXPENSES ALLOWANCE</u></b>		
Standard PEA for all Part III residents.	<b>£16.80</b>	<b>£17.50</b>
<b><u>RATES OF BENEFIT</u></b>		
<b>ATTENDANCE ALLOWANCE</b>		
Higher rate	<b>56.25</b>	<b>57.20</b>
Lower rate	<b>37.65</b>	<b>38.30</b>
<b>DISABILITY LIVING ALLOWANCE</b>		
<b>Component Care</b>		
Highest	<b>56.25</b>	<b>57.20</b>
Middle	<b>37.65</b>	<b>38.30</b>
Lowest	<b>14.90</b>	<b>15.15</b>
<b>Mobility Component</b>		
Higher	<b>39.30</b>	<b>39.95</b>
Lower	<b>14.90</b>	<b>15.15</b>
<b>EARNINGS RULES</b>		
Permitted work earnings limit (new rate applies from Oct. 02)	<b>66.00</b>	<b>67.50</b>
<b>INCAPACITY BENEFIT</b>		
<b>Long-term Incapacity Benefit</b>		
Short-term Incapacity Benefit (under pension age)		
Lower rate	<b>53.50</b>	<b>54.40</b>
Higher rate	<b>63.25</b>	<b>64.35</b>
<b>Short-term Incapacity Benefit (over pension age)</b>		
Lower rate	<b>68.05</b>	<b>69.20</b>
Higher rate	<b>70.95</b>	<b>72.15</b>
<b>Increase of Long-term Incapacity Benefit for age</b>		
Higher rate	<b>14.90</b>	<b>15.15</b>
Lower rate	<b>7.45</b>	<b>7.60</b>
<b>Invalidity Allowance (Transitional)</b>		
Higher rate	<b>14.90</b>	<b>15.15</b>
Middle rate	<b>9.50</b>	<b>9.70</b>
Lower rate	<b>4.75</b>	<b>4.85</b>
<b>INCOME SUPPORT</b>		
<b>Personal Allowances</b>		
18 to 24	<b>42.70</b>	<b>43.25</b>
25 or over	<b>53.95</b>	<b>54.65</b>
<b>Residential Allowance</b>		
Except Greater London	<b>64.40</b>	<b>65.50</b>
Greater London	<b>71.65</b>	<b>72.85</b>

<b>Premiums</b>		
<b>Pensioner</b>		
<b>Single</b>	44.20	47.45
<b>Couple</b>	65.15	70.05
<b>Pensioner (enhanced)</b>		
<b>Single</b>	44.20	47.45
<b>Couple</b>	65.15	70.05
<b>Pensioner (higher)</b>		
<b>Single</b>	44.20	47.45
<b>Couple</b>	65.15	70.05
<b>Disability</b>		
<b>Single</b>	23.00	23.30
<b>Couple</b>	32.80	33.25
Allowances for personal expenses for claimants in		
<b>Private and voluntary residential</b>		
<b>Care and nursing homes</b>		
<b>Personal expenses</b>	16.80	17.50
<b>Local authority (Part III) accommodation</b>	75.50	77.45
<b>Of which, Personal Expenses</b>	16.80	17.50
Capital		
<b>Upper limit</b>	8000.00	8000.00
<b>Amount disregarded</b>	3000.00	3000.00
<b>Child's limit</b>	3000.00	3000.00
<b>Upper limit of RC/NH</b>	16000.00	16000.00
<b>Amt disregarded of RC/NH</b>	10000.00	10000.00
<b>Upper limit o/60s</b>	12000.00	12000.00
<b>Amount disregarded o/60s</b>	6000.00	6000.00
Tariff income		
<b>£1 for every complete £250 or part thereof between amount of capital disregarded and capital upper limit</b>		
Expenses for subtenants		
<b>Furnished or unfurnished</b>	4.00	4.00
<b>where heating is included, additional</b>	9.40	9.65
RETIREMENT PENSION		
<b>Category A or B</b>	75.50	77.45
<b>Category B(lower) - husband's insurance</b>	45.20	46.35
<b>Category C or D - non-contributory</b>	45.20	46.35
<b>Category C(lower) - non-contributory</b>	27.00	27.70
Additional pension		Increase by 1.7%
SEVERE DISABLEMENT ALLOWANCE		
<b>Basic rate</b>	42.85	43.60
<b>Age-related addition (from Dec 90)</b>		

**ANNEX A**

<b>Higher rate</b>	<b>14.90</b>	<b>15.15</b>
<b>Middle rate</b>	<b>9.50</b>	<b>9.70</b>
<b>Lower rate</b>	<b>4.75</b>	<b>4.85</b>
STATUTORY ADOPTION PAY		
<b>Earnings threshold</b>		<b>77.00</b>
<b>Rate</b>		<b>100.00</b>
STATUTORY MATERNITY PAY		
<b>Earnings threshold</b>	<b>75.00</b>	<b>77.00</b>
<b>Standard rate</b>	<b>75.00</b>	<b>100.00</b>
STATUTORY PATERNITY PAY		
<b>Earnings threshold</b>		<b>77.00</b>
<b>Rate</b>		<b>100.00</b>

**Tariff income from Capital****Capital held between these  
Amounts****Tariff income to be taken  
into account**

Nil	£11,500	£0
£11,500.01	£11,750	£1
£11,750.01	£12,000	£2
£12,000.01	£12,250	£3
£12,250.01	£12,500	£4
£12,500.01	£12,750	£5
£12,750.01	£13,000	£6
£13,000.01	£13,250	£7
£13,250.01	£13,500	£8
£13,500.01	£13,750	£9
£13,750.01	£14,000	£10
£14,000.01	£14,250	£11
£14,250.01	£14,500	£12
£14,500.01	£14,750	£13
£14,750.01	£15,000	£14
£15,000.01	£15,250	£15
£15,250.01	£15,500	£16
£15,500.01	£15,750	£17
£15,750.01	£16,000	£18
£16,000.01	£16,250	£19
£16,250.01	£16,500	£20
£16,500.01	£16,750	£21
£16,750.01	£17,000	£22
£17,000.01	£17,250	£23
£17,250.01	£17,500	£24
£17,500.01	£18,000	£25
£17,750.01	£18,250	£26
£18,000.01	£18,500	£27
£18,250.01	£18,750	£28
£18,500.01 and above	standard rate payable	

## Value of National Savings Certificates

Issue Number	Unit Price	Year of Issue	Value of each unit (in £'s) at:				
			1.7.97	1.7.98	1.7.99	1.7.00	1.7.01
1 <sup>st</sup>	15s.6d	1916-1922	4.56	4.61	4.66		4.76
2 <sup>nd</sup>	16s.	1922-1923	4.49	4.54	4.59		4.69
3 <sup>rd</sup>	16s.	1923-1932	3.80	3.85	3.90		4.00
Conversion	16s.	1932	3.80	3.85	3.90		4.00
4 <sup>th</sup>	16s.	1932-1933	3.28	3.33	3.37		3.45
5 <sup>th</sup>	16s	1933-1935	3.17	3.21	3.25		3.34
6 <sup>th</sup>	15s.	1935-1939	3.13	3.17	3.23		3.33
7 <sup>th</sup>	15s.	1939-1947	5.35	5.54	5.72		6.04
£ issue	£1	1943-1947	5.35	5.54	5.72		6.04
8 <sup>th</sup>	10s.	1947-1951	3.44	3.56	3.68		3.88
9 <sup>th</sup>	15s.	1951-1956	4.47	4.63	4.79		5.05
10 <sup>th</sup>	15s.	1956-1963	3.82	3.95	4.09		4.32
11 <sup>th</sup>	£1	1963-1966	4.98	5.15	5.32		5.63
12 <sup>th</sup>	£1	1966-1970	4.09	4.23	4.38		4.63
Decimal	£1	1970-1974	3.80	3.93	4.06		4.28
14 <sup>th</sup>	£1	1974-1976	3.53	3.65	3.77		3.99
14 <sup>th</sup>	£1	1977-1979	2.98	3.08	3.18		3.36
Index-linked retirement issue	£10	1975-1980	28.93	30.15	30.54		32.12
16 <sup>th</sup>	£5	1976-1977	18.43	19.08	19.68		20.78
18 <sup>th</sup>	£10	1979-1980	28.14	29.13	30.10		31.77
19 <sup>th</sup>	£10	1980-81	27.58	28.55	29.49		31.14
Second index-linked issue	£10	1980-85	19.78	20.61	20.88		21.96
21 <sup>st</sup>	£10	1981	24.98	25.86	26.71		28.20
23 <sup>rd</sup>	£25	1981-1982	65.18	67.47	69.62		73.54
24 <sup>th</sup>	£25	1982	57.73	59.75	61.75		65.16
25 <sup>th</sup>	£25	1982-83	51.80	53.62	55.33		58.47
26 <sup>th</sup>	£25	1983-84	52.28	54.12	55.85		58.99
27 <sup>th</sup>	£25	1984	48.77	50.48	52.15		55.07
28 <sup>th</sup>	£25	1984	52.80	54.66	56.41		59.58
29 <sup>th</sup>	£25	1984-85	49.27	50.99	52.67		55.61
3 <sup>rd</sup> index-linked issue	£25	1985-1986	49.93	50.38	51.43		54.41
30 <sup>th</sup>	£25	1985	48.19	51.69	53.34		56.33
31 <sup>st</sup>	£25	1986	44.92	46.50	48.03		50.71
4 <sup>th</sup> index-linked issue	£25	1966-1990	38.22	39.95	40.79		43.16
32 <sup>nd</sup>	£25	1986-87	46.20	47.83	49.35		52.12
33 <sup>rd</sup> re-investment	£25	1987-1988	39.95	41.36	42.75		45.12
34 <sup>th</sup> re-investment	£25	1988-1990	38.45	39.80	41.07		43.38
35 <sup>th</sup> re-investment	£25	1990-1991	41.10	42.54	43.90		46.36
5 <sup>th</sup> index-linked issue reinvestment	£25	1990-1992	30.64	36.14	36.72		38.47
36 <sup>th</sup> issue							
36 <sup>th</sup> issue reinvestment	£25	1991-1992	37.59	38.91	40.19		42.44
37 <sup>th</sup> issue	£25	1992	35.82	37.71	38.95		41.14
37 <sup>th</sup> issue	£25	1992	35.82	37.71	38.95		41.14

reinvestment						
38 <sup>th</sup> issue	£25	1992	35.04	36.83	38.01	40.15
38 <sup>th</sup> issue	£25	1992	34.18	36.52	37.75	39.85
reinvestment						
39 <sup>th</sup> issue	£100	1992	132.72	141.06	145.71	153.87
39 <sup>th</sup> issue	£100	1992	132.72	141.06	145.71	153.87
reinvestment						
40 <sup>th</sup> issue	£25	1992-1993	29.67	31.85	33.54	35.41
reinvestment						
6 <sup>th</sup> index-linked	£25	1992-1993	29.80	31.85	34.01	35.64
issue						
6 <sup>th</sup> index-linked	£25	1992-1993	29.80	32.52	34.01	35.64
reinvestment issue						
41 <sup>st</sup> issue	£25	1993-1994	28.05	29.78	31.95	34.16
reinvestment						
7 <sup>th</sup> index-linked	£25	1993-1994	28.45	30.52	32.67	34.72
issue						
42 <sup>nd</sup> issue	£100	1994-date	105.20	11.28	116.70	133.85
reinvestment						
8 <sup>th</sup> index-linked	£100	1994-date	106.37	112.86	117.95	133.44
issue						
Reinvestment	£100	1994-date	106.37	112.86	117.95	133.44
43 <sup>rd</sup> issue	£100	1996-date	100.94	104.83	109.41	122.77
reinvestment						
9 <sup>th</sup> index-linked	£100	1996-date	100.00	106.65	109.88	121.81
issue						
Reinvestment	£100	1997-date	101.48	106.65	109.88	121.81
44 <sup>th</sup> issue	£100	1997-date	100.94	100.94	104.83	115.20
reinvestment						
10 <sup>th</sup> index-linked	£100	1997-date	100.00	100.00	107.51	118.07
issue						
Reinvestment	£100	1997-date	101.48	104.55	107.51	118.07
11 <sup>th</sup> index-linked	£100	1197-date	100.00	100.00	105.13	114.61
issue						
Reinvestment	£100	1998-date		102.32	105.13	114.61
45 <sup>th</sup> issue	£100	1998-date		100.00	104.61	114.31
Reinvestment	£100	1998-date		100.90	104.61	114.31
12rh index-linked	£100	1998-date		100.00	104.91	113.94
issue						
Reinvestment	£100	1998-date		102.19	104.91	113.94
46 <sup>th</sup> issue	£100	1998-date		100.00	100.00	109.90
Reinvestment	£100	1998-date		100.90	101.80	109.90
13 <sup>th</sup> index-linked	£100	1998-date		100.00	100.00	109.17
issue						
Reinvestment	£100	1998-date		102.19	101.58	109.17
47 <sup>th</sup> issue	£100	1998-date				109.63
Reinvestment	£100	1998-date		102.19	101.58	109.17
Reinvestment	£100	1998-date				109.63
14 <sup>th</sup> index-linked	£100	1998-date				108.36
issue						
48 <sup>th</sup> issue	£100	1998-date				107.51
Reinvestment	£100	1998-date				107.51
15 <sup>th</sup> index-linked	£100	1998-date				106.44
issue						
49 <sup>th</sup> issue	£100	1998-date				107.04
Reinvestment	£100	1998-date				107.04
50 <sup>th</sup> issue	£100	1999-date				106.61
Reinvestment	£100	1999-date				106.61

51 <sup>st</sup> issue	£100	1999-date	105.93
Reinvestment	£100	1999-date	105.93
52 <sup>nd</sup> issue	£100	1999-date	105.36
Reinvestment	£100	1999-date	104.36
53 <sup>rd</sup> issue	£100	1999-date	104.94
Reinvestment	£100	1999-2000	104.94
16 <sup>th</sup> index-linked issue	£100	2000-date	105.16
Reinvestment	£100	2000-date	105.16
54 <sup>th</sup> issue	£100	2000-date	104.10
Reinvestment	£100	2000-date	104.10
17 <sup>th</sup> index-linked issue	£100	2000-date	100.00
Reinvestment	£100	2000-date	101.57
55 <sup>th</sup> issue	£100	2000-date	100.00
Reinvestment	£100	2000-date	101.85
18 <sup>th</sup> index-linked issue	£100	2000-2001	100.00
Reinvestment	£100	2000-2001	101.12
56 <sup>th</sup> index	£100	2000-2001	100.00
Reinvestment	£100	2000-2001	100.88
19 <sup>th</sup> index-linked issue	£100	2000-2001	100.00
Reinvestment	£100	2000-2001	100.61
57 <sup>th</sup> issue	£100	2000-2001	100.00
Reinvestment	£100	2000-2001	100.00
20 <sup>th</sup> index-linked issue	£100	2001-date	100.00
Reinvestment	£100	2001-date	100.63
58 <sup>th</sup> issue	£100	2001-date	100.00
Reinvestment	£100	2001-date	100.00

Take the purchase price as the capital value if:

the value of the last preceding 1 July is shown as "-"; or  
the certificates are from a new issue not yet shown on this table.

This table is revised annually in July. This table is issued at July 2001

PAYMENT OF ATTENDANCE ALLOWANCE (AA) /DISABILITY LIVING ALLOWANCE CARE COMPONENT (DLA (CC)) .

AA /DLA(CC) may be paid to residents on the following basis:

TYPE OF RESIDENT	EFFECT ON AA/DLA (Care Component)
<b>Resident in following accommodation on 31 March 1993</b>	
LA Part III accommodation	Not payable (except for first 4 weeks if it was already in payment before admission).
Previously placed under para 2 of Schedule 8 to the NHS Act 1977	Not payable (except for the first 4 weeks if it was in payment before admission).
Independent sector home	Payable - (but not if resident receives financial help from LA; or if the home was originally owned / managed by the LA and the resident was in the accommodation when ownership / management was transferred.)
<b>Residents newly placed by a LA in following accommodation from 1 April 1993</b>	
Accommodation owned and/or managed by a local authority, or independent sector accommodation where the LA helps with the fees	Payable for first 28 days (if the person was already entitled to AA/DLA (Care) before admission to residential accommodation). This includes, from 8 April 2002, former 'preserved rights' clients who will be entitled to retain their AA/DLA(Care) for 28 days after the local authority becomes responsible for their funding and care management.
People in LA accommodation who do not get financial help from a LA and are not entitled to IS or HB.	For as long as they satisfy the conditions of entitlement

<p><b>From 1 July 2002 people in LA or independent sector accommodation who are subject to a deferred payments agreement, and;</b></p> <p><b>i) have agreed in writing with the LA to sell their house and pay back the full amount of the relevant contributions following the end of the exempt period.</b></p> <p><b>ii) are not entitled to IS/MIG</b></p>	<p>Continue to receive AA and DLA for as long as they satisfy the conditions of entitlement.</p>
<p>People in independent sector accommodation who do not get financial help from a LA and are not entitled to IS or HB.</p>	<p>For as long as they satisfy the conditions of entitlement</p>
<p><b>Anyone aged 65 and over on or after 1 July 2002 who resides in a care home and who is in receipt of free personal care.</b></p> <p><b>It is the resident's responsibility to report receipt of personal care payments to the DWP.</b></p>	<p><b>Payable for first 28 days (if the person was already entitled to AA/DLA (care) before admission to residential accommodation)</b></p>
<p><b>Receipt of free nursing care, but not free personal care, by anyone of any age in a care home.</b></p>	<p><b>Continue to receive AA and DLA(care) for as long as they satisfy the conditions of entitlement</b></p>

*This information is meant as a guide only and should not be seen as an authoritative statement of the law relating to the payment of AA/DLACC).*

## PAYMENTS OF INCOME SUPPORT AND RETIREMENT PENSION FOR PERIODS IN HOSPITAL

Income Support and Retirement Pension are affected in the following ways when a resident goes in to hospital.

TYPE OF RESIDENT		INCOME SUPPORT	RETIREMENT PENSION
<b>LA Part III accommodation</b>	<b>Immediately</b>	IS applicable amount drops to personal expenses allowance rate immediately on admission.	RP drops to 20% of the basic RP rate immediately on admission.
	<b>After 6 weeks</b>	IS drops to the higher rate Hospital Pocket Money rate.	RP drops by 40% of the basic RP rate.
	<b>After 52 weeks</b>	IS drops to lower rate of Hospital Pocket Money.	RP reduces to 20% of Basic RP rate
<b>Independent Sector residents placed by LA on or after 1/4/93 and also, from 8 April 2002, former 'preserved rights' clients.</b>	<b>Immediately</b>	If resident remains liable for charge, no change to IS.	No change
	<b>After 6 Weeks</b>	IS reduces to higher Hospital Pocket Money rate	RP drops by 40% of the basic RP rate.
	<b>After 52 weeks</b>	IS reduces to lower Hospital Pocket Money Rate.	RP reduces to 20% of Basic RP rate

*This information is meant as a guide only and should not be seen as an authoritative statement of the law relating to Income Support and Retirement Pension.*

## **LEGISLATION FOR PAYMENT OF WAR WIDOWS SPECIAL PAYMENTS**

- a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990, made under section 3 of the Naval and Marine Pay and Pensions Act 1865;
- b) the Royal Warrant of 19 February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- c) the Queen's Order dated 26 February 1990 made under section 2 of the Air Force (Constitution) Act 1917;
- d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Force Act 1980;
- e) the Orders dated 19 February 1990 amending orders made on 12 December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Force Act 1980.
- f) article 29(1A) of the Naval, Military and Air Force etc. (Disablement and Death) Service Pensions Order 1983.
- g) article 27(3) of the Personal Injuries (Civilians) Scheme 1983.
- h) the dispensing Order in Council of 19 December 1881.
- I) the Royal Warrant of 27 October 1884.
- j) the dispensing Order by His Majesty of 14 January 1922.

## **THE COMMUNITY CARE (RESIDENTIAL ACCOMMODATION) ACT 1998**

1. The 1998 Act amends Section 12 of the Social Work (Scotland) Act 1968. It clarifies the law concerning the amount of capital that a local authority must disregard when determining whether to provide a person with residential accommodation.
2. The 1998 Act requires local authorities to disregard a person's capital up to the limit prescribed in the charging regulations made under section 22 of the National Assistance Act 1948 when considering whether to make accommodation arrangements for a person under section 12 of the 1968 Act or section 7 of the Mental Health (Scotland) Act 1984. The prescribed limit is currently £18,500. The 1998 Act is also relevant to those who are self-funding in a care home (see paragraphs 8 to 13).
3. When assessing ability to pay for accommodation arranged under the 1968 Act or 1984 Act, the National Assistance (Assessment of Resources) Regulations 1992 require (a) that capital of £11,500 or less is fully disregarded and (b) that capital over £11,500 and up to £18,500 is taken into account in full for the purposes of calculating tariff income.

### **II. NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT NO 2) REGULATIONS 1998**

4. The National Assistance (Assessment of Resources) Regulations 1992 have been amended to align with the new provisions of the 1998 Act. The regulations have been amended so that the definition of "resident" includes a person for whom it is proposed to provide accommodation under Part III of the National Assistance Act 1948, as well as a person for whom accommodation is provided. (Section 87(3) of the Social Work (Scotland) Act 1968 requires that accommodation provided under the 1968 Act, and section 7 of the Mental Health (Scotland) Act 1984, shall be regarded as provided under Part III of the 1948 Act for charging purposes.) There are also consequential amendments to the current regulations.
5. The amendment regulations therefore enable authorities to apply the charging regulations in respect of a person who is a "prospective resident" so that, where an authority is determining whether to make accommodation arrangements, any capital or other resources belonging to a person can be taken into account before the placement is actually made.

### **III. CAPITAL LIMITS AND ASSESSMENT OF NEED**

6. During the second reading of the Community Care (Residential Accommodation) Bill in the House of Lords, concerns were raised about a number of issues involving the provision of residential accommodation, the capital limits and assessment of need.
7. Local authorities have legal duty under section 12A of the Social Work (Scotland) Act 1968 to assess the care needs of anyone who, in the authority's view, may be in need of community care services. It is the Department's view that the law does not allow authorities to refuse to undertake an assessment of care needs for anyone on the grounds of the person's financial circumstances, for example, because they have capital in excess of the capital limit for residential accommodation. Even if someone may be able to pay the full cost of any

services or make their own arrangements independently (but see paras 8 and 9), they should be informed about the type of care they require and about what services are available.

8. Where an authority has completed a financial assessment of a resident's resources and the person's capital (including the value of any property) is above £18,500, the resident has to pay the full charge. The person may be in a position to make his own care home arrangements. However, the social work department has a duty to offer to make arrangements for those people who are unable to make care arrangements for themselves and who have no-one to make arrangements for them.

9. Once an authority has established that a resident has capital above the upper limit, it should therefore satisfy itself that the individual is able to make their own care arrangements, or has others who are willing and able to make arrangements for them. Where there is a suitable advocate or representative (in most cases a close relative), local authorities should make available guidance and advice on the availability and appropriate level of services to meet the individual's needs. Where there is no suitable advocate or representative to act on the individual's behalf, it is the responsibility of the authority to make the arrangements and to contract for the person's care.

10. Once an authority has carried out a care needs assessment and determined that an individual requires residential sector care, they should make the necessary arrangements without undue delay. Where it is foreseen that there will be a delay, the authority should ensure that suitable arrangements are in place to meet the needs of the individual and of his or her carer if appropriate. Similarly, where a self-funding resident has capital that has reduced to the £18,500 upper capital limit, as soon as reasonably practicable, the local authority should undertake a community care assessment and, if necessary, take over arrangements to ensure that the resident does not use capital below £18,500.

11. It is recognised that local authorities cannot be aware of the financial circumstances of every self-funding resident. However, information produced by local authorities on the charging arrangements should refer to the upper limit prescribed in the charging regulations and the rights of self-funding residents to financial assistance from the authority when their capital falls to the upper limit of £18,500.

12. Concern was also expressed during the passage of the Bill about the position of people placed by local authorities but who subsequently became self-funding, for example, through the sale of property. If an authority is to end a contract and make the person 'self-funding', they should satisfy themselves that the person is able to manage his or her own affairs, or, if not, has someone who can take over the arrangements. Where the person is unable to manage his own affairs and has no-one to act for them, it would be for the authority to continue to manage the contract for the resident. The contract should remain a local authority placement. If the person is capable, or has someone to act for them, and the authority decides to terminate its involvement on financial grounds, it must inform the resident or his representative in writing to explain why. A person placed in a care home directly managed by a local authority cannot enter into a private contract with the care home manager as a self-funder, as in an independent sector home. They are liable to pay the full cost to the authority of providing the accommodation.