

Circular No. CCD 2/2009

Directors of Social Work
Chief Executive of Local Authorities
Directors of Finance of Local Authorities
Other Organisations – see Annex 1

23 March 2009

Dear Colleague

REVISED GUIDANCE ON CHARGING FOR RESIDENTIAL ACCOMMODATION

Summary

1. Two sets of regulations made under the National Assistance Act 1948 come into force on 6 April 2009. This Circular provides information on the content of the regulations. In particular it:

- confirms the revised Personal Expenses Allowance (PEA) of £21.90 from 6 April 2009 for local authority supported residents of care homes – **Annex 2 refers.**
- confirms further amendments to the financial assessment for residential care from 6 April 2009 – **Annex 3 refers.**
- attaches a revised version of the *Charging for Residential Accommodation Guidance* to reflect the changes summarised in Annexes 2 and 3.

Action

2. Local authorities should replace their existing *Charging for Residential Accommodation Guidance* with the updated Guidance. It is sent as a separate attachment. Changes from last year are highlighted.

Regulations

3. The regulations referred to in this circular are:

- The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2009 (**SSI 2009 No.72**); and
- The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2009 (**SSI 2009 No.73**).

Copies are available from TSO (telephone 0870 600 5522) or can be accessed on the Scottish Statutory Instruments section of the Office of Public Sector Information Website at:

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

Enquiries

8. All enquiries relating to this circular should be addressed to Michael Cutts at the above address or by telephone on 0131 244 3742, or by emailing michael.cutts@scotland.gsi.gov.uk.

9. This circular is also available on Scottish Health on the Web at:

<http://www.show.scot.nhs.uk/sehd/ccd.asp>

Yours sincerely

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Circular Copied to:

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ARK Housing Association
Association of Directors of Social Work
Audit Scotland
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Camphill Scotland
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Scottish Churches Parliamentary Office
Scottish Consortium for Learning Disabilities
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Scottish Federation of Housing Associations
Scottish Human Services Trust
Scottish Pensioners Forum
Housing Support Enabling Unit
The Abbeyfield Society for Scotland Ltd
The Scottish Community Care Forum
United Kingdom Home Care Association
Values into Action

NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (SCOTLAND) REGULATIONS 2009 (No.73)**Legal basis**

1. Under section 22(4) of the National Assistance Act 1948, in assessing a resident's ability to pay for residential accommodation, local authorities are required to allow the resident an amount for personal expenses. This amount is usually increased each April at the same time as Social Security benefits are updated.

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

New PEA Amount from 6 April 2009

3. The revised PEA of £21.90 applies to all residents in care homes receiving help from local authorities towards the cost of their care over and above free personal and nursing care

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 NHS Scotland. In this regard, local authorities should ensure that an individual resident's need for continence supplies or chiropody 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 should exert no pressure of any kind.

5. Local authorities are reminded that, 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 NHS Scotland. 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.

**NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT
(SCOTLAND) REGULATIONS 2009 (No.72)****Capital Limits**

1. From 6 April 2009 the upper and lower capital limits in residential care charging are increased in line with inflation from £13,000 (lower) and £21,500 (upper) to £13,750 and £22,500 respectively. These increases are in line with inflation and maintain the value of individuals' capital in real terms against which authorities raise charges, effectively making this a cost-neutral change.

Savings Disregard

2. The Savings Disregard was introduced in October 2003 in response to the Savings Credit element of Pension Credit. DWP is increasing the Savings Credit in line with the rise in average earnings from 6 April. From the same date the maximum Savings Disregard is increased from £5.45 for single people and £8.15 for couples to £5.65 and £8.45 respectively. These increases are designed to retain the status quo, whereby the cost of the Savings Disregard is balanced by the charging income to local authorities from Savings Credit.

CHARGING FOR RESIDENTIAL ACCOMMODATION GUIDANCE

**EFFECTIVE FROM
6 APRIL 2009**

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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 Sections 25 and 26 of the Mental Health (Care and Treatment) (Scotland) Act 2003 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 Sections 25 and 26 of the Mental Health (Care and Treatment) (Scotland) Act 2003

- 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 is considering whether to make arrangements for residential accommodation under the Social Work (Scotland) Act 1968 or Sections 25 and 26 of the Mental Health Care and Treatment (Scotland) Act 2003 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 to 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 (i.e. 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 National Assistance (Assessment of Resources) Regulations 1992 (SI No: 2977)**.

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)

Residents with a dependent child

1.011 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

1.011A 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

1.011B A free personal care contribution of £153 is payable for people aged 65 and over, rising to £222 where nursing care is also required. A free nursing care contribution of £69 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))

1.011C 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 circular CCD 5/2003: Free Personal and Nursing Care in Scotland Consolidated Guidance.

http://www.show.scot.nhs.uk/sehd/publications/CC2003_05.pdf

Information to be given to the resident

1.012 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/Pension Credit 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

1.013 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 manage their own financial affairs. In these cases, the local authority should find out if anyone has a Power of Attorney or any other legal powers to act on behalf of the resident (e.g. someone who has been given appointeeship by the Department for Work and Pensions for the purpose of Benefit payments, or with powers granted to them under the Adult with incapacity (Scotland) Act 2000).

Collecting charges from residents in independent homes

Resident to pay the charges direct to the home

1.014 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

1.015 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

1.016 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

1.016A 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

1.017 With effect from 6 October 2003, the Part 3 (also known as Part 4) rate of Income Support/Minimum Income Guarantee was abolished and people in residential accommodation, which is managed or provided by a local authority, are entitled to normal rates of Income Support/Pension Credit.

1.018 People in residential accommodation which is managed or provided by a local authority, but which does not include board, are entitled to Income Support/Pension Credit as if they were living in their own home and may claim Housing Benefit.

Independent homes

1.019 With effect from 6 October 2003, the residential allowance element of Income Support/Minimum Income Guarantee was abolished and people in registered independent residential care homes, including those providing nursing care, are entitled to normal rates of Income Support/ Pension Credit. They are not entitled to Housing Benefit.

1.020 People in unregistered residential accommodation are entitled to Income Support/Pension Credit at the same rate as if they were living in their own homes. They may claim Housing Benefit and Supporting People payments where appropriate.

Attendance Allowance/Disability Living Allowance (Care Component)

1.020A See **Annex D** for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care Component).

Admission to Hospital

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

Preserved Rights

1.022 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'. The charging regulations and rules in this guidance now apply to all former 'preserved rights' cases in residential accommodation.

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

1.023 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 Centres. (See Circular SWSG 8/93)

In this respect, a consent form has been developed by DWP for individuals to complete so that information of the detailed breakdown of the rate of benefit they can receive can, with their consent, be shared with local authorities as appropriate. The full title of the form is *Customer's Consent to the DWP Disclosing their Benefit Entitlement Information to the LA for Community Care Assessment Purposes*. The form was circulated in community care circular: CCD7/2003.

Complaints

1.024 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.

Permanent and Temporary Stays

1.025 Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such, local authorities' or users' resources should play no part in the decision. Knowing whether they are permanent or temporary will matter a great deal to residents and carers. Hence decisions about the

status of admission should be made, agreed and shared openly with them – or others on their behalf, if appropriate, and put in writing.

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, i.e. to what extent is he incurring costs directly for necessities such as food, fuel and clothing

- the degree of the resident's independence, i.e. to what extent should he be encouraged to take on expenditure commitments
- whether he needs a greater incentive to become more independent, e.g. he may be encouraged to take on paid employment if most or all of his earnings and any Working Tax Credit received 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 lower capital limit for Pension Credit is £10,000. There is no upper limit for Pension Credit (or Housing Benefit if the resident receives the guarantee element of Pension Credit). The capital limits for Income Support and Housing Benefit are £10,000 and £16,000 respectively.

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/Pension Credit 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/Pension Credit 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 (e.g. 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 (e.g. 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 (e.g. 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/Pension Credit for temporary residents

3.006A Where a resident, aged 60 years or over, enters residential accommodation for a temporary period, the calculation of Pension Credit/Income Support, including deemed income from capital, will generally be the same as when he was in his own home, i.e. the £6,000 lower capital limit will apply and not the £10,000 capital limit for permanent residents. This may mean that the Pension Credit/Income Support that would normally be payable to a permanent resident may not be payable at the same level.

Assessing ability to pay

3.007 If the local authority decides 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/Pension Credit is in payment, check, from the resident's notice of award of Income Support/Pension Credit, whether the benefit

includes an amount in respect of housing costs. If it does, disregard the amount allowed. Income Support/Pension Credit 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

3.010A Since April 2003 under the new 'Supporting People' arrangements, local authorities have become responsible for the provision of 'prescribed' housing support services to enable vulnerable people to establish themselves or remain in their own homes. Local authorities can purchase such services from providers or can make direct payments to individuals who have a disability.

Residents of care homes are not eligible for assistance under the 'Supporting People' arrangements unless the service was grant funded or part-grant funded through the Special Needs Allowance Package under section 2(2) of the Housing (Scotland) Act 1988 during the financial year ending at 31 March 2003 or unless they were in receipt of housing benefit under Schedule 1B of the Housing Benefit (General) Regulations 1987 at 31 March 2003.

In circumstances where a local authority makes a direct payment to a resident of a care home for a housing support service but a resident has a liability to meet a charge for his care, these payments should be disregarded from the assessment of income and capital.

Additionally, where a resident is paying part or all of the cost of a housing support service from his own resources, the amount of this expenditure should be disregarded from the assessment of income and capital.

'Prescribed' housing support services are defined in the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 and accompanying statutory guidance available on

www.scotland.gov.uk/housing/supportingpeople.

Schedule 3 para 28D and Schedule 4 para 22

3.011 Income Support/ Pension Credit, Housing Benefit and Supporting People payments 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/Pension Credit/HB;
- insurance premiums;
- service charges not met by IS/Pension Credit/HB
- housing support charges not met by the local authority

Schedule 3, para 27

3.012 Where neither Income Support/Pension Credit, Housing Benefit nor Supporting People payments 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 (e.g. a caravan)
 - loans for repairs or improvements to the dwelling
 - mortgage payments
 - ground rent or other rental relating to a long tenancy
 - service charges (egg regular charge payable to the management company of a block of flats)
 - housing support charges
 - 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

3.012A Any cash payment made to a temporary resident in lieu of concessionary coal is fully disregarded.

Schedule 3 para 28H

Couples

3.013 Where one or both members of a couple including civil partners 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, War Disablement Pension or The Armed Forces Compensation Scheme.

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, including same-sex couples, according to their joint resources. Each person entering residential care should be assessed according to their individual means.

4.002 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 or civil partner 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 or civil partner at home, and if the spouse or civil partner 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 including civil partners

4.003 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 £22,500 capital in his own right, or his share of jointly owned capital must be in excess of £22,500 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 or civil partnership 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/Pension Credit awarded in respect of home commitments. Income Support/Pension Credit 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 Income Support/Pension Credit/Housing Benefit

- insurance premiums

4.004A It will be important for local authorities to consider most carefully the needs of married couples or civil partners in receipt of Pension Credit in this regard as, on the face of it, they now receive less benefit than younger individuals.

Permanent residents

4.005 Where one, or both, members of a couple (including same-sex couples) 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.

Note: paragraphs 4.007 to 4.019 on the treatment of couples in claims for income support/pension credit have been deleted and reproduced at **Annex G**.

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 (e.g. 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 local authority and/or have been assessed as necessary to meet individuals' needs by the local authority 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. **As from 6 April 2009 it £21.90 per week.**

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 in addition to disregarding any Child Tax Credit in payment. 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 (e.g. Income Support/Pension Credit,

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/Pension Credit 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 or civil partner (see 8024A). This disregard does not apply to couples who are not married or in a civil partnership.. Where the person in residential accommodation is the main recipient of an **unmarried** couples' (or a same-sex couple who have not entered a civil partnership) overall income (e.g. 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, Pension Credit, 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.
- where a person is responsible for a property that has been disregarded, for example, because they are temporary or they qualify for one of the mandatory property disregards, the local authority should consider increasing the person's PEA to meet any resultant costs.

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)

Treatment of Investment Bonds

- 6.002A The treatment of investment bonds in the financial assessment for residential care is complex because, in part, of the differing products that are on offer. For this reason, local authorities should seek the advice of their legal departments when they arise. However, it is possible to offer some general advice and local authorities are referred to the Social Security Commissioners decision R (IS) 7/98.
- 6.002B Local authorities are advised that if an investment bond is written as one or more life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset in the financial assessment for residential care (see paragraphs 15, Schedule 10 of the Income Support (General) Regulations 1987). In contrast, the surrender value of an investment bond without life assurance is taken into account.
- 6.002C Income from investment bonds, with or without life assurance, is taken into account in the financial assessment for residential care. Actual payments of capital by periodic instalments from investment bonds, with or without life insurance, are treated as income and taken into account provided that such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £16,000. (See also 8.014A)

Effect of capital

Capital limits

- 6.003 A resident with capital of more than £22,500 is liable to pay the standard charge for the accommodation (subject to any entitlement to free personal and nursing care payments) 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 £22,500 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 (over and above any entitlement to free personal and nursing care) if they have more than £22,500 in their own right; or if their own capital and their share of jointly held capital is more than £22,500.
- Reg 20
- 6.004 Capital of £13,750 or less is fully disregarded.
- 6.005 Capital over £13,750 and up to £22,500 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 £22,500 or less but more than £13,750, 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 £13,750. This is called "tariff income".

Reg 28

A tariff income table is at Annex B

Examples

1. The resident has £14,050 capital. £13,750 is disregarded and tariff income of £2 is taken into account as income.
2. A resident has £13,850 capital. £13,750 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 8.018F)

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 £15,000 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 £10,000 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. Only the £10,000 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 £31,000 in a joint building society account. The resident contributed £11,000 and the resident's daughter, £20,000. Treat the resident as owning £15,500.

The joint account is then closed and the resident and her daughter open separate accounts. The resident has £11,000 in her account. Treat her as owning £11,000.

Treatment of capital

Valuation

6.010 For the purposes of valuation only the value of a capital asset (for example property) **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 only where there will be actual expenses. The expenses must be connected with the actual sale, and not simply the realisation of an asset, e.g. the cost of fares to withdraw money from a bank are not expenses of sale. The deduction is always 10% even if it is known from the outset that the actual expenses will be more or less than 10%; **and**

Reg 23(1)(a)

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

Reg 23(1)(b)

6.011 A capital asset may have a current market value (e.g. stocks and shares) or a surrender value (e.g. 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, e.g. 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 £22,500; or

b) £13,750 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 Once the asset has been sold (e.g. a property), the capital to be taken into account is the actual amount realised from the sale less the actual expenses of the sale.

Debt secured on asset

6.015 "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.

6.016 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 1 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 provides a link to the National Savings Website

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 (i.e. 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 **(if that genuinely represents its current market value)**

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 (e.g. 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 (e.g. 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 6.064)
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) FundSchedule 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 (e.g. 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

- income (including earnings) payable in a country outside the UK which cannot be transferred to the UK
Schedule 4 para 11
 - an occupational pension
Schedule 4 para 12
 - any rent
Schedule 4 para 15
- any Social Fund payment
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, e.g. 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
- Any payment made under the Age-Related Payments Act 2004.
Schedule 4 para 24
- 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)
- where the resident is a student, any grant payment from a public source intended for the childcare costs of a child dependant

Schedule 4 para 25

- The value of any ex-gratia payments made on or after 1 February 2001 by the Secretary of State in consequence of a person's or person's spouse's or civil partner'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 £25,000 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 £15,000. In this case £13,750 of the resident's remaining capital would be completely disregarded in addition to the £10,000 ex-gratia payment, and the tariff income rules applied to the remaining £1,250.

- The value of any ex-gratia payments from the Skipton Fund to people infected with Hepatitis C as a result of NHS treatment with blood or blood products.

Schedule 4, para 15

- 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 6.029C)

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 Annex B of Circular HDL (2003)7 and 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 considers this to be appropriate, e.g. 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, 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/ Pension Credit
- Minimum Income Guarantee
- Working Families Tax Credit
- Disabled Person's Tax Credit
- Working Tax Credit
- Child 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/Pension Credit. It is explained to the resident that the charge will be re-assessed once IS/Pension Credit 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 6 weeks, arrears of IS/Pension Credit 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/Pension Credit 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 reinstated 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 Such payments relating to the interim period between 14 October 2002 and the 28 February 2003, when the new regulations came into force, 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 (i.e. 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 **£22,500**, treat the instalments as income.

If it is **£22,500** 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). In cases of doubt, local authorities should seek their own legal advice.

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, e.g. 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, if the resident is not still in work, as 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 8.062).

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.

Reg 22(6)

Trust funds

- 6.046 The treatment of trust funds, 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.

Reg 25(2)

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)

6.056A Pension Credit includes slightly more relaxed notional capital rules compared with Income Support. In Income Support, individuals may be treated as if they still possess capital in circumstances where they have deliberately deprived themselves of it in order to maximize their benefit entitlement. Pension Credit specifies circumstances in which this would not apply. For example, individuals who choose to use their savings to reduce or clear a debt (including debts not immediately repayable) will no longer be considered as having deliberately deprived themselves to maximise entitlement. Pension Credit will also have slightly different rules for what resources an individual may be assumed to have when they apply for benefits. The deprivation/resources on application 'rules' within the residential care charging system are retained, in line with the rules for Income Support.

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.

E.g. 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 (e.g. as a gift or to repay a debt)
- Substantial expenditure has been incurred (e.g. 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 (e.g. personal possessions)
- Capital has been reduced by living extravagantly (e.g. gambling or following a much higher standard of living than the resident could normally afford).
- Capital has been used to purchase an investment bond with life insurance. Local authorities will wish to give consideration, in respect of each case, to whether deprivation of assets has occurred i.e. did the individual place his capital in such an investment bond so that it would be disregarded for the purposes of the Assessment of Resources Regulations.

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 or civil partner. The local authority ignore the value of the resident's share in property while the spouse or civil partner 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 or civil partner to purchase the smaller property, the resident makes part of his share of the proceeds from the sale available to the spouse or civil partner. 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 £24,000 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 £18,000 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 SWSG 15/1993).

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 e.g., 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 SWSG15/93).

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 £20,000 plus actual capital of £6,000. This results in him having to pay the standard charge of e.g. £400.

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 £110 and a

personal allowance of, for example, £19 he would be assessed as paying a charge of £91.

If the resident is under 65 and not eligible for free nursing care, the notional capital should be reduced by £309 per week i.e. the difference between the sum he has to pay because of the notional capital (£400) and the charge he would have had to pay if the notional capital did not exist (£91).

If the resident is 65 or over and eligible for the free personal care payment of £145 per week the notional capital should be reduced by £164 per week i.e. the difference between the sum he has to pay because of his notional capital (£400-£145= £255) and the charge he would have had to pay if the notional capital did not exist (£91)

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. See Annex B of Circular HDL (2003)7.

Schedule 4 para 1A

7.002B If a resident sells his only or main residence within the first 12 weeks of a permanent stay the disregard ceases to have effect from the date of the sale.

7.002C 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.

7.002D 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 **£13,750**.

7.002E 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.

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 lone parent who is the claimant's estranged or divorced partner
- a relative of the resident (as defined at 7.004) or member of his family (as defined at 7.004A) 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, civil partner 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, a civil partnership 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 or civil partnership 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 i.e. 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 £22,500, or when added to any other capital assets will take the total capital over £22,500, 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, i.e. 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 i.e. 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 £22,500, 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 most recent Community Care Circular CCD 13/2004: Deferred Payment of Care Home Fees

http://www.show.scot.nhs.uk/sehd/publications/CC2004_13.pdf

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 **£13,750** 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)

Deferment of top-up payments

- 7.024 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, e.g. 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 8.064 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 for permanent residents only. (Cash in lieu of concessionary coal is disregarded for temporary residents)
- 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, War Disablement Benefit or The Armed Forces Compensation Scheme) 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/Working 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/Pension Credit (but see paragraphs 8.024 and 8.039 for exceptions)
- Industrial Death Benefit

Industrial Injuries Disablement Benefit (IIDB) (8.008) - see also above and 3.014 for treatment of CAA and ESDA paid with IIDB

- Incapacity Benefit
- **Employment and Support Allowance**
- Carer's Allowance (formerly 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) e.g. 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 3.014). 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 and 8.006.

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); or
- b) a gallantry award e.g. Victoria Cross Annuity, George Cross Annuity (fully disregarded - see paragraph 8.043).

Income from Investment Bonds

8.014A The treatment of investment bonds in the financial assessment for residential accommodation is complex because, in part, of the differing products on offer. For this reason local authorities should seek the advice of their own legal departments when they arise. However, it is possible to offer some general advice.

8.014B Income from investment bonds, with or without life assurance, is taken into account in the financial assessment for residential accommodation. Actual payments of capital by periodic instalments from investment bonds, with or without life insurance, are treated as income and taken into account provided that any such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £16,000. (See also 6.002A, B and C)

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 5 situations only, income which covers mortgage repayments, payments for water rates and council tax may be disregarded - see paragraph 8.037.

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 by the Resident

8.018B 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

8.018C 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 **£13,750**, but only for the duration of that disregard.
- e) For people with a deferred payment agreement, capital over **£22,500** 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 **£22,500** 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
- Armed Forces Compensation Scheme
- 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.

Armed Forces Compensation Scheme

8.023A The Armed Forces compensation scheme 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 the Armed Forces compensation scheme - see 3.014 and 8.006 for treatment of AA and CAA.

The savings disregard

8.024 A savings disregard based on qualifying income was introduced on 6 October 2003 and is made to residents as follows:

For individuals aged 65 and over

- where a resident is in receipt of qualifying income of less than £96.00 per week there will be no savings disregard made.
- where a resident is in receipt of qualifying income between £96.00 and £130.00 per week, the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £5.65, whichever is less.
- where a resident is in receipt of qualifying income in excess of £130.00 per week, and a savings credit reward is in payment, a flat rate savings disregard of £5.65 per week is made irrespective of how much the savings credit payment is.
- where a resident has qualifying income above the limit for receiving a savings credit reward (£159.00), a flat rate savings disregard of £5.65 is made.

For couples (including civil partners and other same-sex couples):

- where a resident who is part of a couple and is in receipt of qualifying income of less than £153.40 per week, there will be no savings disregard made.
- where a resident who is part of a couple and is in receipt of qualifying income between £153.40 and £198.45 per week, the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £8.45, whichever is less.
- where a resident who is part of a couple and is in receipt of qualifying income in excess of £198.45 per week, and a savings credit reward is in payment, a flat rate savings disregard of £8.45 per week is made irrespective of how much the savings credit is.
- where a resident who is part of a couple and has qualifying income above the limit for receiving a savings credit reward (£266.02) a flat rate savings disregard of £8.45 is made.

The values of £130.00 and £198.45 above represent the standard minimum guarantee for an individual and couple respectively. These amounts are increased to an appropriate minimum guarantee where individuals and couples qualify as severely disabled or as carers because of receipt of qualifying benefits. Details of Pension Credit are given in Annex H. Examples of how the savings reward is calculated, plus a list of qualifying income, are given in the Community Care Circular: CCD7/2003.

Other disregarded sums

8.024A 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, personal pensions and retirement annuity contracts

8.024B Where a resident is in receipt of an occupational pension, personal pension or payment from a retirement annuity contract and has a spouse or civil partner 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 or civil partner, for whatever reason, then the disregard should not be applied and the full amount 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 or civil partner should cease to be disregarded is on death of the spouse or civil partner or divorce.

Schedule 3 para 10A

8.024C Where an unmarried partner or civil 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).

8.024D Where a spouse or civil partner is legally entitled to receive part of the occupational, personal pension or retirement annuity contract (e.g. 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, e.g. 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 (i.e. £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/Pension Credit 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/Pension Credit award which is paid in respect of home commitments for temporary residents (8.039)
- Direct payments made by a local authority under Section 12B of the Social Work (Scotland) Act 1968 to individuals in respect of a care service that they or a dependent child have been assessed as requiring, except where such payments are made for the provision of residential care.

This also includes:

- Direct payments made by a local authority to a resident where the housing service was grant-funded or part-grant funded during the financial year ending on 31 March 2003 by Special Needs Allowance Package under section 2(2) of the Housing (Scotland) Act 1988
- Direct payments made by a local authority to a resident for a housing support service who was in receipt of housing benefit payable under Schedule 1B of the Housing Benefit (General) Regulations 1987 at 31 March 2003.
- Certain charitable and voluntary payments (8.051)
- Child Support Maintenance Payments and Child Benefit unless the child is accommodated with the resident under Part III of the National Assistance Act 1948
- Child Tax Credit
- Guardian's Allowance
- Where the resident is a student, any grant payment from a public source intended for the childcare costs of a child dependant
Schedule 3 para 28J
- Christmas bonus (8.041)
- Any payment made under the Age-Related Payments Act 2004
- 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 value of any ex-gratia payments from the Skipton Fund to people infected with Hepatitis C as a result of NHS treatment with blood or blood products
 - 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 (including winter fuel payments)
 - Certain payments made to trainees (8.045A)
 - War widows and widowers special payments (8.046)
 - Work expenses paid by employer, and expenses paid to voluntary workers (8.049 and 8.050).
 - Any payment made section 51A of the Adoption (Scotland) Act 1978

Income Support/Pension Credit paid for home commitments

8.039 Under the Income Support/Pension Credit rules, an amount may be included in the award of Income Support/Pension Credit in respect of specified expenses to maintain the home address. Payment may continue for up to 52 weeks.

8.040 Any Income Support/Pension Credit 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/Pension Credit 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 and widower's Pensions;
- War Disablement Pension;
- Armed Forces Compensation Scheme
- 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, Carer's 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, Carer's Allowance and Unemployability Supplement (as above) if claimed before April 2003. 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

8.042B Child Tax Credit is paid in place of child dependency increases in claims for Job Seeker's Allowance, Incapacity Benefit, Retirement Pension, Carer's Allowance and Unemployment Supplement from 7 April 2003. Where Child Tax Credit is in payment, it should be disregarded in full, regardless of whether or not the child is accommodated with the resident.

Schedule 3 para 28G

Gallantry awards

8.043 Gallantry awards are:

- Victoria Cross Annuities
- George Cross Annuities
- analogous awards e.g. 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 and war widowers' special payments

8.046 War widows and war widowers' special payments are made to the widows of men or widowers of women who died from injuries or illness which resulted from service ending before 31 March 1973. The special payments are intended to compensate those widows and widowers 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 and widowers do not qualify for the normal UK widows and war widowers 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 widows and war widowers benefit. Because they do not qualify for war widows and war widowers pensions under the normal rules, they are also excluded from the war widows and war widowers special payments scheme. The Secretary of State for Defence may therefore make special payments which are analogous to the war widows and war widowers special payments. Such payments are fully disregarded in the assessment.

8.048 War widows and war widowers special payments and analogous payments can normally be identified by the amount contained in the war widows and war widowers pension order book. In cases of doubt, contact the Veterans Agency, at Norcross, Blackpool FY5 3TA (Tel: 0800 169 2277). They will need to know the name and reference number (shown on the pension book) of the war widow or widower.

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, e.g. 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

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

Payments to meet higher fees

8.057 Special rules apply to charitable or voluntary payments which are **intended for 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.

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
5. Rehabilitation 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/Pension Credit is claimed. For Income Support/Pension Credit claimants LAs should liaise with the Jobcentre Plus/Pension Centre to obtain details. Where no income 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 questions covered in 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 £12,400 and so the total capital of £15,200 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 £13,800 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 (i.e. $\text{£}2,000 \div \text{£}250$). 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.

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. E.g. travelling expenses incurred by the employee between his home and the place of employment.

Regs 10 and 13

- Any remuneration paid by, or on behalf of the employer to an employee who is temporarily unable to work because of illness or confinement.

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:

- paid by the resident; or
- deducted from the earnings by the resident's employer.

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/Pension Credit in payment

9.010 Where a resident, who is getting Income Support/Pension Credit, 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/Pension Credit will be withdrawn. The local authority should work out the same number of weeks by dividing the payment by the amount of Income Support/Pension Credit 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/Pension Credit 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/Pension Credit 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/Pension Credit previously in payment plus the disregard)

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

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

Income Support/Pension Credit not in payment

9.011 Where Income Support/Pension Credit 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).

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.

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/Pension Credit in payment

9.016 Where a resident, who is getting Income Support/Pension Credit, 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/Pension Credit will be withdrawn. The local authority should work out the same number of weeks by dividing the payment by the amount of Income Support/Pension Credit 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/Pension Credit 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/Pension Credit 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/Pension Credit previously in payment plus the disregard)

In the 6th week the balance of the payment should be taken into account (i.e. $£800 - (5 \times £150) = £50$)

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

Income Support/Pension Credit not in payment

9.017 Where Income Support/Pension Credit 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 (i.e. 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 9.016 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/Pension Credit 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 as blind

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.

or:

e) receives Carer's Allowance (formerly Invalid Care Allowance)

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

is interrupted, any earnings paid, or due to be paid in respect of that self-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 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 1925 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 to him. (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 (i.e. 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 £22,500; or
 - b) less than £13,750

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 effectively 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 The following periodical payments are disregarded:

- Payments from a trust whose funds are derived from a payment made in consequence of any personal injury.
- Payments under an annuity purchased pursuant to any agreement or court order to make payments, or from funds derived from such a payment, in consequence of any personal injury
- Payments received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury.

(The agreements mentioned above include out-of-court settlements.)

10.027 The payments in 10.026 are fully disregarded if intended and used to pay for any item which was not taken into account when the standard rate was fixed for the accommodation provided. Otherwise, £20 is disregarded.

Schedule 3 para 10

SECTION 11 - LIABILITY OF RELATIVES

General

- 11.001 Section 62 of the Adult Support and Protection (Scotland) Act 2007 repealed with effect from **5 October 2007** sections 42 and 43 of the National Assistance Act 1948, and thus the liable relative rule. Section 62 also repealed all references to the liable relative rule in other legislation. (See Circular CCD6/2007).

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 (SAAS), 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. Young students from low income families may have part of their loan replaced with a Young Students' Bursary. The maximum payable is £2,575 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 and Higher Education Funding Council (SFHEFC) for allocating student funds and awarding student bursaries. In both cases, the support a

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. 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's parents, or spouse (or partner in the case of a college or education bursary) or civil partner should make a contribution to the student's support. Such a contribution would be assessed on the basis of the income 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 are administered by the Student Loan Company. Although students apply to the Student Awards Agency for Scotland for the loans and they 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

Discretionary Funds (previously know as Hardship funds)

12.018 Discretionary funds provided by the Scottish Executive are intended to provide financial help to students whose access to, or continuance in, Further of Higher Education may be inhibited by financial considerations. These funds are administered by the education institutions (universities and colleges) and they have the discretion to administer payments as they best see fit and payments can be made as a lump sum or more regular payments

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.

ANNEX A

SOCIAL SECURITY BENEFITS RATES

(Weekly rates unless otherwise shown)

RATES OF PERSONAL EXPENSES ALLOWANCE

	RATES 2008	RATES 2009
Standard PEA for all supported residents.	£21.15	£21.90

RATES OF BENEFIT

ATTENDANCE ALLOWANCE

Higher rate	67.00	70.35
Lower rate	44.85	47.10

DISABILITY LIVING ALLOWANCE

Component Care

Highest	67.00	70.35
Middle	44.85	47.10
Lowest	17.10	18.65

Mobility Component

Higher	45.00	49.10
Lower	17.75	18.65

EARNINGS RULES

Permitted work earnings limit	88.50	92.00
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EMPLOYMENT AND SUPPORT ALLOWANCE

Personal Allowances

Under 25	47.95	50.95
25 or over	60.50	64.30

Components

Work related activity	24.00	25.50
Support	29.00	30.85

Premiums

Enhanced disability

Single	12.60	13.40
Couple	18.15	19.30

Severe disability

single	50.35	52.85
Couple (lower rate)	50.35	52.85
Couple (higher rate)	100.70	105.70

INCAPACITY BENEFIT

Long-term Incapacity Benefit	84.50	89.80
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ANNEX A

Short-term Incapacity Benefit (under pension age)		
Lower rate	63.75	67.75
Higher rate	75.40	80.15
Short-term Incapacity Benefit (over pension age)		
Lower rate	81.10	86.20
Higher rate	84.50	89.80
Increase of Long-term Incapacity Benefit for age		
Higher rate	17.75	15.65
Lower rate	8.90	6.55
Invalidity Allowance (Transitional)		
Higher rate	17.75	15.65
Middle rate	11.40	9.10
Lower rate	5.70	5.35
INCOME SUPPORT/Minimum Income Guarantee		
Personal Allowances		
18 to 24	47.95	50.95
25 or over	60.50	64.30
Premiums Pensioner		
Couple	94.40	97.50
Pensioner (enhanced)		
Couple	94.40	97.50
Pensioner (higher)		
Couple	94.40	97.50
Disability		
Single	25.85	27.50
Couple	36.85	39.15
Allowances for personal expenses for claimants in Private and voluntary residential		

ANNEX A

Capital		
Upper limit	16,000.00	16,000.00
Pension Credit	No limit	No limit
Amount disregarded	6,000.00	6,000.00
Child's limit (not pension credit)	3,000.00	3,000.00
Upper limit of RC/NH (until 30 Sept 2003)	16,000.00	16,000.00
Amt disregarded of RC/NH	10,000.00	10,000.00
Upper limit o/60s	16,000.00	16,000.00
Amount disregarded o/60s	6,000.00	6,000.00
Tariff income		
£1 for every complete £250 or part thereof between amount of capital disregarded and capital upper limit		
Expenses for subtenants		
Furnished or unfurnished where heating is included, additional	20.00	20.00
RETIREMENT PENSION		
Category A or B	90.70	95.25
Category B(lower) - husband's insurance	54.35	57.05
Category C or D - non-contributory	54.35	57.05
Category C(lower) - non-contributory	32.50	34.15
Additional pension		Increase by 5.0%
SEVERE DISABLEMENT ALLOWANCE		
Basic rate	51.05	57.45
Age-related addition (from Dec 90)		
Higher rate	17.75	15.65
Middle rate	11.40	9.10
Lower rate	5.70	5.35
STATUTORY ADOPTION PAY		
Earnings threshold	90.00	95.00
Rate	117.18	123.06
STATUTORY MATERNITY PAY		
Earnings threshold	90.00	95.00
Standard rate	117.18	123.06
STATUTORY PATERNITY PAY		
Earnings threshold	90.00	95.00
Rate	117.18	123.06
Pension Credit		

ANNEX A

Standard minimum guarantee		
Single	124.05	130.00
Couple	189.35	189.45
Additional amount for severe disability		
Single	50.35	52.85
Couple (one qualifies)	50.35	52.85
Couple (both qualify)	100.70	105.70
Additional amount for carers	27.75	29.50
Savings Credit threshold		
Single	91.20	96.00
Couple	145.80	153.40
Capital		
Amount disregarded – care homes	10,000.00	10,000.00
Deemed Income		
£1 for each complete £500 or part thereof in excess of the above amounts		
Housing Costs		
Deductions for non dependants		
- aged 18 or over, not in work or in work and in receipt of Pension Credit	7.40	7.40
-aged 18 or over and in work :		
-gross income: less than £116	7.40	7.40
-gross income: £116 to £171.99	17.00	17.00
-gross income: £172 to £222.99	23.35	23.35
-gross income: £223 to £295.99	38.20	38.20
-gross income: £296 to £368.99	43.50	43.50
-gross income: £369 and above	47.75	47.75
Disregards		
Standard earnings	5.00	5.00
Couple earnings	10.00	10.00
Higher earnings	20.00	20.00
War Disablement Pension and War Widows pension	10.00	10.00
Armed Forces Compensation Scheme	10.00	10.00
Student loan	10.00	10.00
Student's covenanted income	5.00	5.00
Income from boarders (disregard the fixed £20 plus 50% of the balance of the charge	20.00	20.00
Deductions for direct payments, arrears of housing, fuel, water costs, council tax and fine default	3.05	3.25
Arrears of Community Charge court order	3.05	3.25

ANNEX A

against claimant		
Court order against couple	4.75	5.05
Maximum rates recovery of overpayments		
-ordinary overpayments	9.15	9.75
-where claimant convicted of fraud	12.00	12.80

ANNEX B

Tariff income from Capital

Capital held between these Amounts

Nil	£13,750	£0
£13,750.01	£14,000	£1
£14,000.01	£14,250	£2
£14,250.01	£14,500	£3
£14,500.01	£14,750	£4
£14,750.01	£15,000	£5
£15,000.01	£15,250	£6
£15,250.01	£15,500	£7
£15,500.01	£15,750	£8
£15,750.01	£16,000	£9
£16,000.01	£16,250	£10
£16,250.01	£16,500	£11
£16,500.01	£16,750	£12
£16,750.01	£17,000	£13
£17,000.01	£17,250	£14
£17,250.01	£17,500	£15
£17,500.01	£17,750	£16
£17,750.01	£18,000	£17
£18,000.01	£18,250	£18
£18,250.01	£18,500	£19
£18,500.01	£18,750	£20
£18,750.01	£19,000	£21
£19,000.01	£19,250	£22
£19,250.01	£19,500	£23
£19,500.01	£19,750	£24
£19,750.01	£20,000	£25
£20,000.01	£20,250	£26
£20,250.01	£20,500	£27
£20,500.01	£20,750	£28
£20,750.01	£21,000	£29
£21,000.01	£21,250	£30
£21,250.01	£21,500	£31
£21,500.01	£21,750	£32
£21,750.01	£22,000	£33
£22,000.01	£22,500	£34
£22,500.01	above £22,500	standard rate payment

ANNEX C

Value of National Savings Certificates

The link below will allow access to both a calculator and tables to calculate the value of National savings Certificates.

<http://www.nsandi.com/products/ilsc/calculator.jsp>

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)
Residents receiving local authority support towards their fees (including those receiving free personal care (FPC) but excluding help with free nursing care (FNC) – see below).	Payable for the first 28 days (if the person was already entitled to AA/DLA (Care) before admission to residential accommodation).
Anyone aged 65 and over who resides in a care home and who is in receipt of free personal care. It is the resident's responsibility to report receipt of personal care payments to the DWP.	Payable for first 28 days (if the person was already entitled to AA/DLA (care) before admission to residential accommodation)
Residents who do not get help with fees from a local authority, other than for FNC (See below) even if they are entitled to Income Support, Housing Benefit, income based Jobseekers Allowance or Pension Credit	Continues to be payable for as long as they meet the conditions of entitlement.
Receipt of free nursing care, but not free personal care, by anyone of any age in a care home.	Continue to receive AA and DLA (care) for as long as they satisfy the conditions of entitlement.
Residents who are receiving a 12-week property disregard, are funded for that period by a local authority, and will become self-funding, or only receive help with FNC, from the thirteenth week or earlier if the property is sold.	Continues to be payable for the first 28 days and will recommence from the thirteenth week or when self-funding status re-commences

<p>Residents who are temporarily receiving help with the fees while a capital asset is being realised and / or have a Deferred Payment Agreement and where the local authority will be reimbursed their full costs, except for any FNC payment. N.B. since 6 October 2003, entitlement to Income Support, Housing Benefit, and income based Jobseekers Allowance or Pension Credit will no longer affect a care home resident's entitlement to AA/DLA (Care CC).</p>	<p>Continues to be payable for as long as they meet the conditions of entitlement.</p>
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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/DLA(CC).

Note:

Residents who are not receiving local authority funding, other than for FNC, who have not previously claimed AA/DLA and who make a successful claim will be able to continue to receive it while their funding arrangements remain the same. Local authorities may wish to advise and/or assist new residents to make claims and advise self-funding residents of the October 2003 changes whereby receipt of Income Support, income based Jobseekers Allowance or Pension Credit no longer affects their entitlement to AA/DLA.

The withdrawal of AA/DLA after 28 days will apply to residents who are in a temporary placement such as respite care and this could lead to the removal of the additional amount for severe disability.

PAYMENTS OF INCOME SUPPORT/PENSION CREDIT AND RETIREMENT PENSION FOR PERIODS IN HOSPITAL

I Income Support/**Pension Credit** and Retirement Pension: Effect of Admission to Hospital from 10 April 2006

Type of Accommodation	Period in Hospital	Income Support	Pension Credit	Retirement Pension
All residents in local authority residential care homes and independent sector residential care and nursing homes.	Immediately on admission	No change to benefit immediately on admission	No change to benefit immediately on admission	No change to benefit while in hospital
	After 4 weeks	Where Severe Disability Premium is in payment it is withdrawn when the Attendance Allowance or Disability Living Allowance stops.	Where an additional amount for severe disability is withdrawn when the Attendance Allowance or Disability Living Allowance stops.	No change
	After 52 weeks ²	Disability Premium, Enhanced Disability Premium and Higher Pensioner Premium are withdrawn.	No change	No change

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

1. This will be the position for the majority of residents. However, there are different provisions for residents who have dependants. For full details please see the Department for Works and Pensions guidance contained in Chapter 24 of the Decision-Makers Guide.

2. The 28 day linking rules were abolished from 10 April 2006.

3. The AA and DLA (Care component) will continue to be withdrawn after 4 weeks in hospital, which will have an impact on some self-funders and full fee payers.

ANNEX F

LEGISLATION FOR PAYMENT OF WAR WIDOWS AND WAR WIDOWERS SPECIAL PAYMENTS

- a) the Naval and Marine Pay and Pensions (Special War Widows and Widowers 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 and Widowers 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 TREATMENT OF COUPLES IN CLAIMS FOR INCOME SUPPORT/PENSION CREDIT (for information only)

While local authorities do not have powers to assess a couple according to their joint resources, this is not the case for Income Support/Pension Credit. The treatment of a couple for Income Support/Pension Credit 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 partner who remains at home is likely to be able to contribute towards the cost of accommodation.

Temporary Residents

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/Pension Credit purposes, and the whole amount of Income Support/Pension Credit will normally be paid to one partner (generally the partner remaining at home). However, the way that the total amount of Income Support payable to the couple is calculated may differ from the way that the total amount of Pension Credit is calculated.

One member of a couple temporarily in residential accommodation

Where only one member of a couple is temporarily in a residential care home, and the couple are entitled to Pension Credit, the Pension Credit will be paid at the normal rate for the couple as if they were both still at home.

Where one partner is temporarily in a residential care home, and the couple is entitled to Income Support, the Income Support applicable amount will be the **greater** of:

- the normal applicable amount for the couple as if they were both still at home

or

- the applicable amount for the partner remaining at home as if they were a single person **plus** the applicable amount for the partner in the residential accommodation as if they were a single person.

Both partners temporarily in residential accommodation

Where both partners are temporarily in different residential homes or the same residential home, Income Support/Pension Credit will be paid in respect of each partner, plus an amount for home commitments where appropriate.

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

Where one partner moves permanently to residential accommodation Income Support/Pension Credit will be paid as if he were a single person. No account will be taken, in the Income Support/Pension Credit assessment, of the resources of the partner remaining at home.

Both partners in the same residential accommodation

Where both partners are admitted to the same residential care or nursing home, the Job Centre Plus/Pension Service Decision Maker decides whether to assess them as a couple or separately.

A couple who live in the same household are treated as a single unit for Income Support/Pension Credit 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.

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

If both partners are living in the same residential care or nursing home they may be considered to be living in the same household. However, there may be exceptions, e.g. where one partner lives in a nursing wing and the other in a residential wing, they might be said to live in separate households.

If the Jobcentre Plus/the Pension Service Decision Maker decides to aggregate the couple's resources Income Support/Pension Credit will be paid to one member of the couple taking into account the needs of both members.

PENSION CREDIT (for information only)

Pension Credit is an income-related benefit for people aged 60 or over living in Great Britain that tops up their income to a guaranteed level of £130.00 per week for a single person (£198.45 for a couple). These amounts may be more for people who have caring responsibilities, are severely disabled or have certain housing costs.

People aged 65 and over can also be rewarded for some of their savings and income they have for their retirement. It gives pensioners a cash addition of 60p for every £1 of income they have above the savings credit threshold (£96.00 for a single person and £153.40 for a couple) up to a maximum of £20.40 a week (£27.03 a week for couples).

After this, the maximum reward is reduced by 40p for every £1 of income above the income guarantee so that pensioners with incomes up to around £181 a week (£266 a week for couples) could still be entitled. These amounts may be more for people who have caring responsibilities, are severely disabled or have certain housing costs.

The values given in this Annex reflect the increase in Pension Credit from 6 April 2009

For further details about Pension Credit contact the Pensions Disability and Carers Service on 0845 6060265.

For further details on the savings disregard please refer to paragraph 8.024 above and to community care circular CCD7/2003.