POLICY NOTE

THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2023

SSI 2023/19

The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 10 April 2023 in line with changes to the Department for Work and Pensions benefit and pension rates.

Purpose of the instrument

To increase the value of savings credit disregard in line with average earnings which is currently forecast at 5.4%.

To increase the lower capital limit from £18,500 to £20,250 and the upper capital limit from £29,750 to £32,750 in line with CPI forecast at 10.1%.

To disregard from financial assessments payments to individuals living in residential care from the Windrush Compensation Scheme. This will ensure these payments are not taken into consideration by local authorities when carrying out the financial assessment for determining whether a care resident is able to pay for accommodation.

Policy Objectives

Capital Limits

The background is that under section 22 of the National Assistance Act 1948 ("the 1948 Act") as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968, local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation (excluding any entitlement to free nursing and personal care under the Community Care and Health (Scotland) Act 2002 and associated regulations).

Section 22(5) of the 1948 Act provides that, in assessing a resident's ability to pay, the local authority shall apply regulations made by the Secretary of State. The applicable regulations are the National Assistance (Assessment of Resources) Regulations 1992 (S.S.I. 1992/2977) ("the 1992 Regulations"). By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending the 1992 Regulations as regards Scotland are devolved to the Scottish Ministers.

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2022 amended the capital limits so that anyone with capital above the upper capital limit, including property, must meet his or her remaining accommodation costs (over and above any entitlement to free personal care and nursing care) in full. Where the capital falls between upper and lower capital limits the local authority must assist the resident in meeting the cost

of the accommodation. Capital under the lower capital limit is not taken into account in assessing a contribution.

Annual increases to capital limits are increased in line with the Consumer Price Index (CPI), currently estimated to be 10.1%, and rounded to the closest £250. In line with this, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2023 increases the upper capital limit from £29,750 to £32,750 and increases the lower capital limit from £18,500 to £20,250.

Savings Credit Disregard

The 1992 Regulations set out a number of different types of income that are to be disregarded when a local authority assesses a resident's income for the purpose of charging. Since the introduction of the State Pension Credit Act 2002 this has included a sum where a resident is in receipt of savings credit. These Regulations increase the maximum weekly savings credit disregard from £7.30 to £7.70 for single resident and from £10.85 to £11.45 for couples. These increases are in line with the increase in average earnings (5.4%).

Windrush Compensation Scheme

The 1992 Regulations set out a number of discretionary payments which are to be disregarded as part of the financial assessment for residential care charges. This is to ensure people retain the full value of these payments in line with the principles of these funds or schemes and their intended outcomes.

The Windrush Compensation Scheme (Expenditure) Act 2020 authorises payment of compensation by the Home Office for certain categories of people who came to the UK many years ago and were entitled to live and work in the UK, but were unable to evidence their right to do so. Many of those individuals have faced difficulties in proving their right to work, to rent property and to access benefits and services to which they are entitled. The UK Government has apologised to people in this position, and in April 2019 established the Windrush Compensation Scheme ("the Scheme"). The Scheme operates to compensate individuals, and in some cases family members, who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom.

These Regulations amend the 1992 Regulations so that payments made under the Scheme are disregarded as part of the financial assessment of a resident's ability to pay for accommodation.

Consultation

Annual rises in the rates referred to above are routine. Additional categories of payment are added to the list of disregarded payments from time to time. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

We have consulted with members of the Charging for Residential Accommodation Guidance ("CRAG") working group, whose membership consists of local authorities, COSLA officials and other stakeholders, on the decision to disregard payments from the Windrush Compensation Scheme.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2022/23.

An Equality Impact Assessment has been completed for the decision to disregard payments from the Windrush Compensation Scheme.

Financial Effects

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases.

Scottish Government
Social Care and National Care Service Development Directorate
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