

EXECUTIVE NOTE

The National Assistance (Assessment of Resources) Amendment (No. 2) (Scotland) Regulations 2005 SSI/2005/522

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 resolution procedure. It is intended that it will come into force on 7 November 2005.

Legal Background

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 the 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 (“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 Scottish Ministers.

The Executive is aware of the need to consolidate the 1992 Regulations and will consider doing so at an appropriate time in the future.

Policy Objectives

These regulations amend the 1992 Regulations from 7 November 2005 by introducing a new disregard of capital into the assessment of a resident’s ability to pay. Payments made by virtue of regulations under section 7 of the Age Related Payments Act 2004 are to be disregarded.

In November 2005, the Department for Work and Pensions (DWP) will make one-off payments to eligible individuals aged over 65 under the Age-Related Payments Regulations 2005, which were made under section 7 of the Age Related Payments Act 2004. Payments can be between £50 and £200 depending on individual circumstances. They are to help meet council tax payments and other general expenses. DWP has stipulated that these payments are for the individual and should not be considered as capital or income for social security or tax credit purposes.

These regulations amend the 1992 Regulations to disregard in full from the financial assessment for residential accommodation all payments made by virtue of regulations under section 7 of the Age Related Payments Act 2004. Similar payments made under sections 2 and 3 of the same Act were disregarded from the financial assessment in 2004.

Consultation

COSLA and ADSW were consulted on the disregard when it was first made in 2004. ADSW agreed to the proposal while COSLA did not comment.

Financial Implications

Since Age Related Payments are a new benefit, their disregard from the financial assessment for residential accommodation will be cost-neutral for local authorities. It was therefore not considered necessary to carry out a regulatory impact assessment.

Scottish Executive Health Department
October 2005

