

EXECUTIVE NOTE TO THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2006 S.S.I. 2006/113

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 10th April 2006.

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 Scottish 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

Capital Limits

Under the 1992 Regulations, residents with assessed capital above the upper capital limit must meet their remaining care costs (after allowing for any entitlement to free personal and nursing care). Between the upper and lower capital limits, residents are assessed as having ‘tariff income’ of £1 per week for every £250 over the lower capital limit. This is added to the assessed income that residents are asked to contribute to care costs. They are not asked to contribute from capital where it falls below the lower capital limit.

These regulations amend the 1992 Regulations to increase the capital limits from £12,000 and £19,500 to £12,250 and £20,000 respectively. The increases are in line with the inflationary increase in individuals’ capital, against which authorities raise charges, effectively making this a cost-neutral change.

Savings Disregard

In response to the introduction of Pension Credit in 2003, the Scottish Executive introduced a savings disregard for residents in residential care aged 65 and over who either receive the Savings Credit element of Pension Credit or have too much income to qualify. The maximum levels were calculated to balance the extra contributions from residents receiving the Savings Credit and hence be cost-neutral for local authorities. From 10th April, 2006 DWP will increase the Savings Credit in line with the rise in average earnings.

These regulations also amend the 1992 Regulations to uprate the maximum savings disregard to £5.05 for single residents and £7.50 for couples (i.e. people who would be regarded as a couple under the State Pension Credit Regulations). 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.

Civil Partnerships

The Civil Partnership Act 2004, which came into force on 5 December 2005, enables same-sex couples to form a civil partnership. Civil partners will be subject to many of the same legal rights and responsibilities as spouses. These regulations make consequential amendments to the 1992 Regulations so that, for charging purposes under the 1992 Regulations, civil partners are treated in the same way as spouses.

Adoption and Support

These regulations also amend the 1992 Regulations to disregard payments made to a resident in respect of a child or young person who is a member of the resident's family in accordance with an adoption allowance scheme under section 51A of the Adoption (Scotland) Act 1978 (which supersede the schemes under section 51 of that Act).

Consultation

COSLA and ADSW were consulted on 16 January 2006 and agreed to the proposed amendments.

Financial Implications

As noted above, uprating of the capital limits and maximum savings disregard levels are balanced for local authorities by the increasing value of residents' capital resources and benefits income. A Regulatory Impact assessment has not been prepared as these changes have no impact on the costs of business.

Scottish Executive Health Department
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