

EXECUTIVE NOTE

THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (NO.2) (SCOTLAND) REGULATIONS 2009 SSI 2009/381

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 26 November 2009.

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.

Policy Objectives

Treatment of Property

Since the charging regulations were made in 1992, guidance, including the Charging for Residential Accommodation (CRAG), has stated that where a person goes into residential care the value of their former home is disregarded, if it continues to be lived in by the person’s partner.

It has been brought to the attention of the Scottish Executive that the Regulations do not in fact exempt such property from the financial assessment unless the partner concerned is over 60 or incapacitated.

These regulations align the legislation with longstanding policy and practice, that where a person goes into residential care the value of their former home is disregarded, if it continues to be lived in by the person’s partner, irrespective of the age of that partner.

Consultation

The Convention of Scottish Local Authorities and the Association of Directors of Social Work were consulted and have agreed to the proposed amendments.

Financial Implications

It has been longstanding policy and practice to disregard the property where a partner aged under 60 resides in the care home resident's former home. There are therefore no financial implications as a result of these regulations. A Regulatory Impact assessment has not been prepared as these changes have no impact on the costs of business.

**Scottish Government Primary & Community Care Directorate
November 2009**