Directorate for Social Care and National Care Service Development

Adult Social Care Local Improvement and Transformation

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Health and Social Care Partnership, Chief Officers
Health and Social Care Partnership, Chief Finance Officers
Local Authority, Chief Executives
Local Authority, Directors of Finance
COSLA
Social Work Scotland
Social Care Support Providers
Other Organisations – see Annex 4

31 March 2025

Dear Colleague,

REVISED GUIDANCE ON CHARGING FOR RESIDENTIAL ACCOMMODATION

Regulations under the National Assistance Act 1948

1. Regulations made under the National Assistance Act 1948 will come into force on 7 April 2025. The Circular provides information on the content of the regulations. In particular it:
   - confirms the revised Personal Expenses Allowance (PEA) of **£35.90** from 7 April 2025 for local authority supported residents of care homes – **Annex 1 refers**.
   - confirms further amendments to the capital limits and savings disregards components of financial assessments for residential care from 7 April 2025 – **Annex 2 refers.**
   - confirms payments that are to be disregarded from financial assessment.
   - attaches a revised version of the *Charging for Residential Accommodation Guidance* to reflect the changes summarised in **Annexes** 1 and 2.

Action

2. Local authorities should replace their existing Charging for Residential Accommodation Guidance with this updated Guidance. This is attached with changes for 2025 highlighted for your convenience.

Regulations

3. The regulations referred to in the circular are:
   - The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2025 SSI 2025/30: The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2025 (legislation.gov.uk)
   - The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2025 SSI 2025/31: The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2025 (legislation.gov.uk)

Free Personal Care

4. Legislation has been passed by the Scottish Parliament to implement the extension of free personal care to people under the age of 65 from 1 April 2019. From this date if any adult is assessed by their local authority as needing personal care, they will receive personal care services free of charge.

5. Routes for contractual agreements are currently shown within Section 1 of the guidance. This shows the structure of the 5 Routes available: Route 1: Independently Funded Supported Person; Route 2: Free Personal/Nursing Care Supported Person; Route 3: Assessed Contribution Supported Person; Route 4: Assessed Contribution Supported Person – with Top Up and Route 5: Fully Funded Supported Person.

6. **Annex A** of the guidance provides a template contract for those in receipt of Free Personal Care and/or Nursing Care which will be between Local Authorities and Independent Sector Care Homes.

The Public Bodies (Joint Working) (Scotland Act 2014)

7. The Act and associated Regulations sets out a range of Local Authority functions which must be delegated to Integration Authorities along with a range of additional functions that may be delegated. Where references to local authorities occur in this guidance, they apply to the delegated functions that are applicable, that have been passed to the Integration Authority.

Annex 3 provides a list of other organisations who have also received a copy of this guidance.

Enquiries

If you have any enquiries relating to this circular please email SocialCareCharging@gov.scot.

This circular is also available on the Scottish Health On the Web ("SHOW") website.

Yours sincerely

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Social Care and National Care Service Directorate

ANNEX 1

NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (SCOTLAND) REGULATIONS 2025 (No.30)

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 (LAs) 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 uprated.

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 publicly funded residents in care homes whether they are placed in a local authority (LA) or independent sector care home.

New PEA Amount from 7 April 2025

3. The revised PEA of **£35.90** 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. This increase is made in line with average earnings.

4. Local authorities are reminded that the PEA should not be spent on aspects of care support or accommodation costs 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 their 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 wellbeing.

ANNEX 2

NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2025 (No. 31)

Capital Limits

1. From 7 April 2025 the upper capital limit in residential care charging is increased from £35,000 to **£35,500**. The lower capital limit is increased from £21,500 to **£22,000**. Changes to capital limits are made 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. From 7 April 2025 the maximum Savings Disregard will be increased in line with growth in average earnings from £8.15 to **£8.50** for single people and from £12.10 to **£12.60** for couples.

New Disregarded Payments

3. From 7 April 2025 the regulations also amends schedule 4 of The National Assistance (Assessment of Resources) Regulations 1992 to provide those certain payments which are to be ignored as capital in the financial assessment of the resident's resources. Any payment made to an individual in respect of:

- Any payment made under the infected blood compensation scheme established by regulations made under section 49 of the Victims and Prisoners Act 2024.
- Any payment from a deceased person's estate that comes from a payment under section 56(1) of the Victims and Prisoners Act 2024.
- Any payment made under an infected blood support scheme as defined in section 56(3) of the Victims and Prisoners Act 2024.
- Any payment from a deceased person's estate that comes from an infected blood support scheme under section 56(3) of the Victims and Prisoners Act 2024.
- Any payment made under the Infected Blood Interim Compensation Payment Scheme as defined in section 56(6) of the Victims and Prisoners Act 2024.
- Any payment from the Post Office or the Secretary of State for compensation, support, damages, or legal costs related to Horizon system failings, including settlements to avoid or end legal proceedings. In this paragraph "Post Office" and "Horizon system" have the same meaning as in section 9 of the Post Office (Horizon System) Offences (Scotland) Act 2024(7).

- Any payment for compensation, support, damages, or legal expenses related to the Grenfell Tower fire on 14 June 2017.
- Any payment made under the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme. In this paragraph, the 'LGBT Financial Recognition Scheme' refers to payments for those affected by the ban on LGBT personnel in the UK armed forces (1967–2000).
- Any payment made under the Vaccine Damage Payments Act 1979(8).
- Any payment to a person's partner that comes from a payment under the Vaccine Damages Payments Act 1979. In this paragraph, 'partner' means a spouse, civil partner, or someone living with the person as if married or in a civil partnership.

is to be ignored.

ANNEX 3

Other Organisations:
Abbeyfield Societies in Scotland
Action on Hearing Loss
Advocacy Orkney
Advocacy Service Aberdeen
Age Scotland
Alzheimer's Scotland
ARK Housing Association
Audit Scotland
Ayrshire Independent Living
BDPA (Trading as Encompass)
Bield Housing and Care
Blackwood
Capability Scotland
Care Information Scotland
Care Inspectorate
Carers Scotland
Carers Trust Scotland
Carr Gomm Community Community Contacts
Circles Network
Citizens Advice Scotland
Clydebank Shopmobility
Coalition of Care and Support Providers Scotland (CCPS)
Coalition of Carers in Scotland
Community Brokerage Network
Compass Brain Specialists
Cornerstone
CrossReach
Deaf Scotland
Disability Information Scotland
Disabled Person's Housing Service
Dundee Carers Centre
East Ayrshire Carers Centre
ENABLE Scotland
Equal Say
Equality & Human Rights Commission
Glasgow Centre for Inclusive Living
Housing Support Enabling Unit
Inclusion Scotland
Independent Living Association Forth Valley
Lothian Centre for Inclusive Living
Marr Area Partnership
MECOPP
Multiple Sclerosis Society Scotland
Mungo Foundation
Outside the Box

Other Organisations:
People First (Scotland)
Perth and Kinross Association of Voluntary Service
Quarriers
RNIB Scotland
Salvation Army
Scottish Care
Scottish Churches Parliamentary Office
Scottish Commission for Learning Disabilities
Scottish Council for Voluntary Organisations
Scottish Federation of Housing Associations
Scottish Parliament
Scottish Pensioners' Forum
Shetland Community Connections
Sight Scotland
The Advisory Group
The Advisory Project
The Scottish Housing Regulator
Thistle Health and Wellbeing
United Kingdom Home Care Association
Values into Action Scotland
VOCAL

CHARGING FOR RESIDENTIAL ACCOMMODATION GUIDANCE

UPDATED

31 March 2025

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SECTION 1 - INTRODUCTION

SECTION 1 - INTRODUCTION

About this guidance

Format

01001 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.

General

Statutory basis

01002 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.

01003 Where a person is provided with accommodation under Part III of the National Assistance Act, Section 22 of that Act provides for them to be charged for the accommodation.

Section 22(1)

01004 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

01005 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)

01006 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

01007 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 06006). Where a local authority needs to calculate a person's capital for the purposes of section 12(3A) of the 1968 Act, their capital shall be calculated in the same way as if they were a person for whom accommodation is **proposed** to be provided.

Section 12(3A) and (3B) of the Social Work (Scotland) Act 1968

Assessing ability to pay

Regulations

01008 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 their 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 homes

01009 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 their ability to pay and, on the basis of that assessment, decide the lower amount which should be paid.

Section 22(3)

Residents with a dependent child

01010 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

01011 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

01012 A free personal care contribution of **£254.60** per week, is payable for any adult who is assessed as needing this care by their local authority. Where nursing care is required a free nursing care contribution of **£114.55** per week is payable for care home residents.

Please consult the Free Personal and Nursing Care Guidance for more information.

Information to be given to the supported person

01013 The local authority must ensure that the supported person is given a clear explanation, usually in writing, of how their financial assessment has been carried out, and include information relating to care support, living and accommodation charges.

01014 The local authority must provide clear details of reasons why the charge may fluctuate, particularly when a supported person first moves into a care home. For example, the effect of benefit paydays on Income Support / Pension Credit or the withdrawal of Attendance Allowance or Disability Living Allowance (care component) / Personal Independence Payment / Adult Disability Payment including the short-term assistance component.

Supported people unable to handle their own affairs

01015 There will be occasions where a supported person is unable to provide the local authority with the information needed to carry out a financial assessment 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, Guardianship or any other legal powers to act on behalf of the supported person i.e. powers granted to them under the Adult with Incapacity (Scotland) Act 2000.

Treatment of fractions in assessment

01016 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

01017 Supported people 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 local authority for that package. Where a separate package of services has been arranged by the local authority for a supported person, then the local authority can consider whether to charge the supported person extra for these services (using the discretionary charging powers for non-residential services). As the resident may only have their Personal Expenses Allowance (PEA) and any disregarded income available, the amount charged (if any) is likely to be minimal.

Routes for Contractual Agreements

Route 1

Independently Funded Supported Person

01018 This is open to all individuals with access to a sufficient combination of independent monetary wealth and capital assets to support the costs of their placement, within a care home of their choice for the duration of their residency.

01019 Although the option to apply for personal and/or nursing care payments is available to all individuals - this individual will **not** be in receipt of personal and/or nursing care financial support from the local authority.

01020 The formal assessment (care needs assessment) regarding the award of personal and/or nursing care payments is carried out by the local authority. This individual may have opted **not** to request a formal assessment or may have been formally assessed by the local authority and advised that they have **not** met the eligibility criteria regarding the award of personal and / or nursing care financial support.

01021 In these circumstances the supported person will be required to enter into a private and independent contractual arrangement with the care home.

Route 2

Free Personal/Nursing Care Supported Person

01022 This approach can be taken once the supported person has been assessed as requiring a care home placement by their local Health and Social Care Partnership's social work team.

01023 The self-funder will be eligible for free personal/and or nursing care and the arrangement of the care home can be carried out by either the supported person, their family or carers or the local authority.

01024 The flat rate payments for free personal and/or nursing care will be paid directly to the care home by the local authority, and this will be done by one contract. A second contract will be required for payment of the remainder of the care costs between the supported person and the care home.

01025 A template contract between the local authority and the care home for the provision of payments of personal and/or nursing care is shown at **Annex A**.

Route 3

Assessed Contribution Supported Person

01026 This approach is available to the supported person who is eligible to receive a publicly funded care home placement.

01027 The supported person is required to apply and be eligible for a care home placement from their local authority.

01028 The local authority enters into a contract directly with the care home and this will pay for the accommodation and living costs and for personal care and/or nursing care, if the latter is required.

01029 The supported person may enter into contracts with both the local authority and the care home. This is dependent on whether the funding for the supported person's care is on a "net[1]" or "gross[2]" basis.

- Net – will require a contract between the care home and the local authority, with a second contract between the care home and the supported person.
- Gross – will require a contract between the care home and local authority and one contract between the local authority and the supported person.

01030 A template contract between the local authority and the care home for accommodation and living costs and personal care and/or nursing care, if the latter is required, is shown at **Annex A**.

Route 4

Assessed Contribution Supported Person – with **Top Up**

01031 This approach is available to the supported person who is eligible to receive a publicly funded (either part or full funded) care home placement with or without free personal and/or nursing care.

01032 The supported person is required to apply and be eligible for a care home placement from their local authority. Although the supported person will be encouraged to apply for personal care and/or nursing care, this route will not be affected whether the supported person is in receipt of personal care and/or nursing care, or not.

01033 There may be occasions when the care home does not accept the National Care Home Contract rate, or the rate the local authority is able to pay for the placement, and the supported person does not have the income or capital to fulfil the shortfall of the costs. On these occasions a **Top Up** is required which should be paid for by a third party, for example, a family member, charity or organisation.

01034 It may be possible, following this route, that there will be up to three contracts in place:

- Contract 1 between the local authority and the care home
- Contract 2 between the supported person and the care home (if net) or the local authority (if gross)

[1] Net – the local authority deducts the assessed contribution from the payment to the care home and the care home will collect this directly from the supported person.

[2] Gross – the local authority will pay the full amount of the agreed rate to the care home and the LA will collect the assessed contribution from the supported person.

- Contract 3 between the care home and the third party (top up)

01035 A contract style between the local authority and the care home for accommodation and living costs and personal care and/or nursing care, if the latter is required, is shown at **Annex A**.

Route 5

Fully Funded Supported Person

01036 This approach is available to the supported person who is eligible to receive a publicly funded placement, and this is irrespective of their financial assessment. This may be used on occasions when the supported person requires specialist care or step-up placements etc.

01037 When following this process, the local authority will pay the rate agreed between the local authority and provider for the supported person's placement which will also include free personal and nursing care. The contract style for this agreement is shown at **Annex A.**

Practicalities

Ensuring a nationally consistent contractual framework

01038 A nationally consistent framework is essential. It will not always be straightforward to cross-relate two different contractual documents but in the interests of equity across Scotland, it must be undertaken.

01039 There are certain critical features that must be nationally consistent, and these are set out in **Annex A**. Examples of issues covered in the nationally consistent contract are:

- The responsibilities of the supported person, service provider agencies, local authorities and any third-party obtaining assessments and paying for care charges;
- Clear, accurate, accessible and easy to understand information relating to care charges;
- Funding arrangements – when local authority payments for social care, and/or personal and/or nursing care start and when and for what reason do they stop;
- Clear, accurate, accessible and easy to understand complaints procedures and information on the role of, and how to raise issues with the Care Inspectorate;
- Clear, accurate and accessible information on Health and Social Care Standards, that set out the standard of care that can be expected by anyone receiving health and social care support;

- Clear, accurate and accessible information on the complaint's procedure for anyone in a care home; and
- Clear, accurate and accessible information on how to contact the Care Inspectorate or Health and Social Care Partnership if there are any concerns about the quality of care a supported person is receiving.

01040 Where the contractual requirements in relation to payments for personal and/or nursing care (e.g. all payments for personal and nursing care will be paid for three days after the death of the individual) are different from existing local authorities' contractual practice, the nationally consistent contractual requirements will take precedence in order to ensure national consistency.

Information for the supported person and their representatives

01041 It is important the supported person, their carers, voluntary organisations and advocacy bodies are given relevant information about the different contractual arrangements, which they can fully understand and then act upon.

01042 Local authorities' staff, organisations, the voluntary sector and the independent care service providers all have a critical role to play in assisting and advising the supported person, and their carers, in terms of contractual arrangements and fees. This is especially so when the supported person and carers approach local authorities' staff about their eligibility for personal and/or nursing care payments.

01043 At this stage, and during the assessment process, local authorities' staff (or staff from other statutory agencies undertaking care needs assessments) should ensure that the supported person and their carers fully understand the differences between all of the approaches above and in particular the approach that is significant to them and other approaches that they may wish to be aware of for the future.

Effects of payments on existing fees

01044 It should be clear to supported people that flat rate payments for personal and nursing care will be made by the local authority directly to the care home. Care home managers will wish to ensure that there is clarity in revised billing arrangements. These arrangements should also reflect the Health and Social Care Standards in relation to clarity of information.

01045 It is important that the full financial benefit of the personal and nursing care policy is passed on to the individual, who should see a consequent reduction in their care home fees. If it becomes evident that this is not happening, it should be reported to the local authority.

Contract Summary

01046 The CRAG cannot cover all the potential issues that may arise around contractual arrangements. These approaches do, however, offer a framework which:

- ensures the supported person's freedom to choose;
- ensures the supported person's right to privacy particularly over their financial situation while they obtain the funding for which they are eligible;
- recognises the complexity and variability of the current contractual arrangements between local authorities and service provider agencies;
- builds on these existing contractual arrangements; and
- ensures a nationally consistent framework for payments for personal and/or nursing care.

01047 In practice, there will be a number of contractual matters that will require clarity locally. As a general rule, these issues should be resolved locally.

Nationally Consistent Framework for a Route 2 Contract for those receiving Free Personal Care and/or Nursing Care between Local Authorities and Independent Sector Care Homes

Introduction

01048 This model contract has been uplifted from the Free Personal and Nursing Care Guidance. This model contract also takes note of the Competition and Markets Authority (CMA) issued advice on 16 November 2018 in respect of consumer law to care service providers for older people's care homes.

01049 A service user who chooses to go down Route 2, Free Personal/Nursing Care Supported Person Route, will use two contracts, one private contract between themselves and the care home for accommodation and living costs, and a second nationally consistent contract for personal and/or nursing care. This second contract will be between the local authority, on behalf of the service user, and the care service provider and will relate solely to the provision of and payments towards personal and/or nursing care.

01050 Where appropriate, in the interests of national consistency and equity, core contract conditions should be incorporated into tripartite contracts agreed under the following routes:

- Route 3 - Assessed Contribution Supported Person
- Route 4 - Assessed Contribution Supported Person – with **Top Up** and
- Route 5 - Fully Funded Supported Person

Background

01051 The Route 2 – Free Personal/Nursing Care Supported Person Contract is a contract between a local authority and a care service provider for the provision of personal and/or nursing care to a care home supported person in return for the flat rate payments set down in The Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations. It can only be used for those supported persons who have entered or will enter into a private agreement with the care service provider for the other parts of their care support package (i.e. their accommodation and living costs) but who have asked the local authority to contribute towards their care costs in accordance with the Scottish Government's policy on free personal and nursing care.

The Contract

The Role of the Model Contract

01052 This updated guidance is aimed at ensuring that local authorities and care service providers can agree Route 2 – Free Personal/Nursing Care Supported Person Contracts which are nationally consistent and take note

of the Competition and Markets Authority (CMA) issued advice on 16 November 2018 in respect of consumer law to care service providers for older people's care homes. The contract should be used for free personal and/or nursing care for adults under and over the age of 65 from 1 April 2019. This model contract has been updated in conjunction with local authorities and the private care sector and should serve as the basis for all Route 2 - Free Personal/Nursing Care Supported Person contracts.

01053 In particular, the model contract, seeks to clarify which aspects of a Route 2 - Free Personal/Nursing Care Supported Person Contract need to be consistent across Scotland, regardless of which local authority and which service provider are signatories to the contract. For example, the conditions under which the contract can be terminated and the length of time for which payments will continue after the death of the supported person are set out in the model contract and should be replicated in all Route 2 - Free Personal/Nursing Care Supported Person Contracts. Similarly the pre-conditions which must be met before a Route 2 - Free Personal/Nursing Care Supported Person contract can be entered into, the length of time for which payments will continue if the supported person is temporarily absent from the home and the amount of the contract price should be the same in all Route 2 - Free Personal/Nursing Care Supported Person Contracts.

01054 Other elements of the model contract are intended as a suggestion or starting point, but may need to be varied to reflect existing local practices, local authority standing orders etc. For example, this is true of parts of those clauses which relate to the monitoring and review of the supported person's care needs.

01055 It is also possible that local authorities and/or care service providers may wish to expand certain parts of the model contract to ensure supported persons are treated fairly to avoid any room for misunderstanding or ambiguity. For example, the model contract refers to the local authority's "usual payment mechanisms" to reflect the existing variations from authority to authority. However, both local authorities and care service providers are likely to see it as desirable that the particular payment mechanisms to be used are described in detail within any Route 2 contract which they are entering into.

Short-Term Placements

01056 The model contract has been drafted primarily with long-term placements in mind. However, many of the same terms and conditions should apply in the case of a short-term placement which is being established on a Route 2 - Free Personal/Nursing Care Supported Person basis. Indeed, the only obvious change to the schedule, which might be necessary in the case of a short-term placement, is the notice periods in the Termination of Contract clause.

Specific Points about the Model

The Offer

01057 The wording of the offer, and the information contained within it, may vary slightly between local authorities. However, for the sake of transparency, it is important that the offer is in respect of a particular supported person, that the supported person's name is on the front sheet of the offer and that the offer states the level of care which will be provided to the supported person under the contract (personal care or nursing care, or personal and nursing care.)

The Schedule

Definition of the Contract Price

01058 The contract price is set in regulations of the Scottish Parliament (The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002) and can only be varied through regulations. The definition is worded in such a way that if the contract price is changed in regulations at some future date, then no amendment will be needed to existing contracts.

Pre-Conditions concerning the supported person

01059 The third pre-condition concerning the supported person ((c) in 2.2) is that the supported person must either have been assessed by the local authority as requiring personal and/or nursing care, or "is a person referred to in Regulation 2 of the Community Care (Assessment of Needs) (Scotland) Regulations 2002...." This refers to those people who were already in a care home prior to 1 April 2019 and for whom local authorities can arrange the provision of personal and/or nursing care without carrying out a care needs assessment under the transitional arrangements for implementation.

Duration of Contract

01060 Local authorities will need to have in place agreed eligibility criteria for assessments of need and priorities for the provision of and access to services based on need. Following a care needs assessment, payment towards personal care should commence when the authority is in a position to arrange or provide the required services. The existence of the model contract should ensure that the individual's contract can be put in place readily.

Payment

01061 The local authority must pay the entire contract price to the care service provider in return for the services, and cannot withhold a part of the payment for any reason, or all of the payment except for the reasons contained in Clauses 10, 14, 15 and 18 (loss of registration, temporary absence of the supported person from the home for longer than 14 days, death of the supported person or termination of the contract.) This is a statutory requirement.

01062 It should be clear to individuals that flat rate payments for personal and nursing care will be made by the local authority to the care home. Care home managers will wish to ensure that there is clarity in revised billing arrangements. These arrangements should also reflect the CMA advice on ensuring contracts between the service provider and the supported person are simple, clear and easy to understand.

01063 It is important that the full financial benefit of the personal and nursing care policy is passed on to the individual who should see a consequent reduction in their care home fees. If it becomes evident that this is not happening, the supported person or their family or carers should in the first instance contact the local authority. If the complainant does not receive a favourable response the complainant may wish to raise a complaint with the Scottish Public Services Ombudsman (SPSO). However, if it is believed that the care home is at fault, the supported person, their family or carers, may wish to raise a complaint firstly with the Care Inspectorate. If the matter is not resolved, the supported person, their family or carer may wish to complain to the SPSO.

01064 It is likely that both local authorities and care service providers will want to expand on the phrase "usual payment mechanisms" by clarifying exactly what payment mechanisms will apply. It is anticipated that in most cases these will be the same payment mechanisms which apply to existing contracts between particular local authorities and particular care service providers. Such payment mechanisms have not been included in the model contract because of the considerable variations between local authorities. Such variation in payment mechanisms should not present a problem and local authorities and care service providers should agree payment mechanisms as they see fit.

01065 Local authorities may also wish to go into greater detail in their own Route 2 - Free Personal/Nursing Care Supported Person Contracts about the arrangements and timing for the submission of receipted invoices to the local authority by the care service provider.

Monitoring and Review of Supported Person's Care Needs: Initial Review

01066 Where there is no trial period, an initial review should still be carried out during the first few weeks after the contract has been entered into, in addition to the next scheduled review as set out in 7.1 below.

Monitoring and Review of Supported Person's Care Needs: Responsibility for Annual Review

01067 Arrangements as to who is responsible for the annual review vary between local authorities. The Scottish Government accepts such variations, provided that there is clarity in the contract about who is responsible for the annual review and when it will be carried out.

Complaints

01068 In some existing contracts between local authorities and care service providers, it is the care service provider's responsibility rather than the local authorities to advise the supported person of their right to complain to the local authority about any aspect of the care being provided under the contract. The Scottish Government has no objection to this responsibility falling on the service provider rather than the local authority, as long as there is clarity for the supported person, their family and carers.

Insurance

01069 Insurance is a mandatory requirement of care home registration in terms of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002. For this reason, some local authorities may feel that this clause is unnecessary. This is a decision for individual authorities to make on the basis of the advice they receive.

Statutory Obligations

01070 Local authorities may wish to replace this clause with their own standard equivalent clause.

Temporary Absence from the Home: Cessation of Payments

01071 The cessation of payments of the contract price after the supported person has been temporarily absent from the home for a period of 14 days is an important element of national consistency across all Route 2 - Free Personal/Nursing Care Supported Person Contracts. This condition should

not be varied in any Route 2 - Free Personal/Nursing Care Supported Person Contract.

01072 The Scottish Government cannot justify the provision of personal and nursing care payments beyond 14 days to anyone who is not receiving those services as a result of temporary absence from the home (and who in the case of hospitalisation is also receiving that care elsewhere from public funds).

Death of the Supported Person

01073 The continued payment of the contract price for 3 days after the date of death is an important element of national consistency. This condition should not be varied in any Route 2 - Free Personal / Nursing Care Supported Person Contract.

01074 For the avoidance of doubt, this clause means that the local authority's financial obligation will end three complete days after the supported person's death (i.e. if the supported person died on 1 September, the contract price should be paid pro rata up to and including 4 September).

Assignation and Subcontracting

01075 Provided that the purchaser / intended purchaser is already registered or succeeds in being granted registration, there appears to be no reason why the local authority would not consent to an assignation of the contract in favour of the purchaser.

User Agreements

01076 The Route 2 - Free Personal/Nursing Care Supported Person Contract will run alongside the private agreement between the supported person and the care service provider. However, one of the signatories to the Route 2 - Free Personal / Nursing Care Supported Person Contract, the local authority, may not see the private agreement. This clause is in part intended to protect the local authority in this situation and to ensure that where the private agreement and the Route 2 - Free Personal / Nursing Care Supported Person Contract are in conflict, the Route 2 - Free Personal / Nursing Care Supported Person Contract takes precedence.

Termination of the Contract: The Care Being Provided is no Longer Appropriate

01077 At the time that a Route 2 - Free Personal / Nursing Care Supported Person Contract is entered into, the contract will specify whether personal care, or personal care and nursing care is to be provided to the supported person

under the contract. The contract price to be paid by the local authority to the care service provider will vary according to the type of care being provided.

01078 As a result of a re-assessment (or assessment in the case of a supported person who received the care under the transitional arrangements for implementation) of the supported person's care needs at a later date, it may become apparent that the care which the supported person is receiving under the contract is no longer appropriate. This could be because the supported person's care needs have significantly increased, and the supported person now requires nursing care as well as personal care. Alternatively, a supported person's care needs might decrease (during recovery from a stroke for example) to the point where a supported person who was being provided with personal care under the contract is assessed as no longer requiring either personal or nursing care.

01079 In all of these instances, since the contract was established for the provision of a particular type of care (personal care or personal and nursing care), the Scottish Government's view is that it would not be appropriate to continue with or adapt the existing contract. Instead, the existing Route 2 - Free Personal / Nursing Care Supported Person Contract would need to be terminated under Clause 18. If the supported person has been assessed as no longer having care needs and is therefore ineligible for a continued contribution towards their care costs, it will not be appropriate to agree a new Route 2 - Free Personal / Nursing Care Supported Person Contract. However, if the supported person's care needs have changed rather than ceased, then it will be appropriate to agree a new Route 2 - Free Personal / Nursing Care Supported Person Contract which reflects these changed needs. This new Route 2 - Free Personal / Nursing Care Supported Person Contract would begin the day after the old contract was terminated.

Notices: The person nominated by the Local Authority

01080 Local authorities may wish to nominate a member of staff more senior than the care manager in this clause.

Variations, 23. Law of Scotland and 24. Exercise of Powers: Standard Clauses

01081 Local authorities may choose to substitute their own standard clauses to replace those here. In addition, local authorities may have other standard clauses which it might be appropriate to include within this part of the schedule.

Social Security Benefits

Local authority managed homes

01082 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.

01083 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

01084 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.

01085 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 payments where appropriate.

Attendance Allowance/Disability Living Allowance (Care Component) Personal Independence Payment/ Adult Disability Payment

01086 See **Annex E** for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care Component)/Personal Independence Payment / Adult Disability Payment (ADP). Where Adult Disability Payments are referred to in this guidance this also includes the short-term assistance component.

Admission to Hospital

01087 When a resident is admitted to hospital, their Social Security benefits will be reduced after a period. See **Annex F** for details.

Preserved Rights

01088 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 Pension/Jobcentre Plus/ Pension Service

01089 It is important that local authorities maintain good liaison arrangements with Jobcentre Plus/Pension Services 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 Jobcentre Plus/ Pension Service. (See Circular SWSG 8/93)

01090 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

01091 Complaints about the level of charge levied by a local authority are subject to the local authority complaints procedures. A revised social work complaints procedure has been introduced from 1 April 2017 for complaints raised after 1 April 2017, as detailed here.

Permanent and Temporary Stays

01092 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

02000 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.

02001 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 then 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

02002 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"

02003 In 2.002 above, "board" means at least some cooked or prepared meals, cooked or prepared by someone other than the resident (or a member of their 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

02004 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 are they incurring costs directly for necessities such as food, fuel and clothing;
- the degree of the resident's independence, i.e. to what extent should they be encouraged to take on expenditure commitments;

- whether their needs are a greater incentive to become more independent, e.g. they may be encouraged to take on paid employment if most or all of their earnings and any Working Tax Credit received are disregarded.

Reg 5

02005 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 guaranteed 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?

03001 The definition of temporary resident contained in the regulations is a resident whose stay is unlikely to exceed 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks.

Reg 2(1)

03002 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.

03003 In deciding whether to treat a resident as temporary, it will be helpful to find out whether:

a) They receive 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 their home address.
c) 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 7/97).

03004 Where a temporary resident has a partner, their resources cannot be jointly assessed (see 04003).

03005 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 them 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).

03006 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 they were a permanent resident from the outset (e.g. take into account Attendance Allowance / Disability Living Allowance / Personal Independence Payments / Adult Disability Payment) 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

<u>Up to 8 weeks</u>

03007 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 12. Where no assessment is made, the local authority will charge an amount that appears reasonable for the resident to pay.

Section 22(5A)

After 8 weeks

03008 After 8 weeks, the local authority must charge the resident at the standard rate for the accommodation and carry out an assessment of their ability to pay.

Income Support/Pension Credit for Temporary Residents

03009 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 they were in their own home. There are special rules for Income Support and income related Employment and Support Allowance where one member of a couple enters residential accommodation for a temporary period (**see Annex G**).

03010 The lower capital limit for temporary residents in receipt of Income Support or income related Employment and Support Allowance is £6,000. The lower capital limit of £10,000 is only applied to permanent residents in receipt of Income Support or income related Employment and Support Allowance and any resident in receipt of Pension Credit.

Assessing Ability to Pay

03011 If the local authority decides to make an assessment straight away, or from the eighth week, their ability to pay should be assessed in accordance with the following paragraphs.

Capital

03012 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 them; **or**
b) they are taking reasonable steps to dispose of the property in order to acquire another more suitable home for them to return to.

Schedule 4 para 1

For all other capital assets, follow the guidance in **Section 6.**

Income

03013 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

03014 If Housing Benefit is in payment in respect of the home address, disregard the amount of Housing Benefit in full.

Schedule 3, para 3

03015 Local authorities are 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. This was formerly known as 'Supporting People' arrangements.

03016 In circumstances where a local authority makes a direct payment to a resident of a care home for a housing support service, but residents have a liability to meet a charge for their care, these payments should be disregarded from the assessment of income and capital.

03017 Additionally, where a resident is paying part or all of the cost of a housing support service from their own resources, the amount of this expenditure should be disregarded from the assessment of income and capital.

03018 'Prescribed' housing support services are defined in the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 and accompanying statutory guidance.

Schedule 3 para 28D and Schedule 4 para 22

03019 Charging is at the discretion of individual local authorities, taking account of COSLA guidance. Income Support/ Pension Credit and Housing Benefit 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 Income Support/Pension Credit/Housing Benefit;
- insurance premiums;
- service charges not met by Income Support/Pension Credit/Housing Benefit
- housing support charges not met by the local authority

Schedule 3, para 27

03020 Where neither Income Support/Pension Credit**,** Housing Benefit 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:

a) 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 (e.g. regular charge payable to the management company of a block of flats)
- housing support charges
- any insurance premiums
- standard charges for fuel
- water rates

OR

b) payments under:

- co-ownership scheme
- tenancy agreement or licence of a Crown tenant

Schedule 3 para 27

03021 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 they will return.

Schedule 3 para 27.

03022 Any cash payment made to a temporary resident in lieu of concessionary coal is fully disregarded.

Schedule 3 para 28H

Couples

03023 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 / Personal Independence Payments (PIP) / Adult Disability Payment / Universal Credit (UC)

03024 Where the resident is a temporary resident, AA or DLA Care Component / PIP / ADP / Universal Credit 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 Disablement Allowance payable with Industrial Injuries Disablement Benefit or War Disablement Pension, and Armed Forces Independence Payment, payable under the Armed Forces Compensation Scheme.

Schedule 3 para 6

03025 It is necessary to ensure there is effective and open communications between local authorities, service providers and service users at all times. This is especially so, when and if the person moves from temporary residency to permanent residency.

SECTION 4 - COUPLES

Local Authority Treatment of Couples

04001 Under the National Assistance Act 1948, the local authority has no power to take into account the resources of the resident's partner; this being their spouse or civil partner. Only resources that are owned in the resident's own right, or the resident's share of jointly owned resources, can be considered in the financial assessment.

04002 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 local authorities to determine.

Capital Limits for Couples including Civil Partners

04003 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 **£35,500** capital in their own right, or their share of jointly owned capital must be in excess of **£35,500** before they are excluded from support on the grounds of capital.

Temporary Residents

04004 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 / Universal Credit awarded in respect of home commitments. Income Support / Pension Credit / Universal 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 / Universal Credit / Pension Credit / Housing Benefit
- insurance premiums

04005 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.

04006 It will be useful to know how Income Support / Universal Credit / Pension Credit will be calculated in these cases. This may give a guideline as to how much the spouse, or civil partner, remaining at home is likely to be able to contribute towards the charge. Where Income Support / Universal Credit / Pension Credit is being paid for a couple or civil partners, it would be reasonable to expect the partner receiving the Income Support / Universal Credit / Pension Credit to contribute towards the charge for accommodation for the other partner a sum equivalent to the Income Support / Universal Credit / Pension Credit payable for that partner. If Income Support / Universal Credit / Pension Credit is paid to the partner in residential accommodation, the full amount will have to be taken into account, but the local authority should consider varying the personal expenses allowance, as described in Section 5, in order to leave enough for the partner remaining at home to meet their expenses. The council should discuss with the partner remaining at home any financial commitments that may be taken into account.

04007 Local authorities should ensure that the partner remaining at home receives, as a minimum, the basic level of Income Support / Universal Credit / Pension Credit for a single person and any premiums / additions to which they may be entitled in their own right. This may involve a voluntary agreement by the partner to disclose information to achieve this.

Permanent residents

04008 Where one, or both, members of a couple 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 relating to how state benefits are calculated for couples have been deleted and reproduced at **Annex H**.

SECTION 5 - PERSONAL EXPENSES ALLOWANCE

Purpose of the Personal Expenses Allowance

05001 The personal expenses 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

05002 In assessing a resident's ability to pay for their accommodation, the local authority is required to ensure that he retains an amount for personal expenses.

Section 22(4)

05003 The amount allowed in the assessment for personal expenses is laid down each year in the National Assistance (Sums for Personal Requirements) (Scotland) 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 7 April 2025 it is **£35.90** per week.

05004 Residents should be left with the full PEA following the financial assessment of their resources. **N.B**. if a resident has no income, it is not the responsibility of the local authority to make a PEA payment to them. It would be expected that the local authority would assist the resident to access welfare benefits or independent advocacy service to resolve the problem.

Varying the Amount of Personal Expenses Allowance

05005 Under the Section 22(4) of the National Assistance Act of 1948, in special circumstances, local authorities have the power to allow a different amount from that prescribed for personal expenses, for example where:

- someone who does not qualify as a "less dependent" resident solely because they live 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 their income in order to help them lead a more independent life.

- where a person in residential accommodation has a dependent child (see paragraph 01011), 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/Universal Credit / 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 / Universal Credit / Pension Credit, including an amount for a partner who remains at home (see 04008), 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 08033). **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 couple who have not entered a civil partnership) overall income (e.g. occupational pension), the LA can, in special circumstances, use their discretion to increase the resident's personal expenses allowance 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, Universal Credit, 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?

06001 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

06002 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 and Investments (NS&I) - 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

06003 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 which rules that an investment bond falls within the disregard by virtue of its intrinsic nature as a policy of life assurance.

06004 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.

06005 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 their accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed **£22,000**. (See also 08015)

Effect of Capital

Capital limits

06006 A resident with capital of more than **£35,500** 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 **£35,500** there is no need to make a wider assessment of their 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 **£35,500** in their own right; or if their own capital and their share of jointly held capital is more than **£35,500**.

Reg 20

06007 Capital of **£22,000** or less is fully disregarded.

06008 Capital over **£22,000** and up to **£35,500** is taken into account in full for the purposes of calculating the resident's tariff income from capital unless regulations specify otherwise (see 06023 onwards).

Tariff Income

06009 Where a resident has **£35,500** or less but more than **£22,000**, 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 **£22,000**. This is called "tariff income".

Reg 28

A tariff income table is at ***Annex C***

Examples

1. The resident has £22,250 capital. £22,000 is disregarded and tariff income of £1 is taken into account as income.
2. A resident has £28,250 capital. £22,000 is disregarded and tariff income of £25 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 their accommodation costs, not the interest earning capacity of that capital. Where capital is taken into account and a tariff calculated, the actual interest earned will not be treated as income, to avoid double counting in the financial assessment. If the interest is not drawn and therefore increases the capital value of the asset, it will be treated as capital in future assessments.*

06010 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 08020)

Beneficiary of Capital

Does the resident own the capital?

06011 A capital asset normally belongs to the person in whose name it is held. The following paragraphs provide guidance on how to establish whether someone has a beneficial interest in the capital where there is a dispute.

Ownership disputed

06012 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

a) A resident has £30,000 in a building society account in their own name. They say that £3,000 is set aside for their grandchild's education. However, there is no deed of trust or other legal arrangement which would

prevent the resident using the whole amount for their own purposes. The resident is treated as the beneficial owner of the whole amount.

b) A resident has £25,000 in a bank account in their own name, and shares valued at £6,500. They provide evidence to show that the shares were purchased on behalf of their adult child, who is abroad, and that they will be transferred to their adult child when they return to Britain. Although the resident is the legal owner, they are holding the shares in trust for their adult child, who is the beneficiary. Only the £25,000 is to be taken into account as the resident's capital.

Joint Beneficiary of Capital

06013 Where a resident is a joint beneficiary of capital with someone else, unless it is an interest in land (see Section 7), 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 their actual share, treat them as owning that actual amount.

Reg 27(1)

Example

A resident and family member have £31,000 in a joint building society account. The resident contributed £11,000 and the family member, £20,000. Treat the resident as owning £15,500. The joint account is then closed, and the resident and the family member open separate accounts. The resident has £11,000 in her account. Treat her as owning £11,000.

Valuation

06014 For the purposes of valuation only the value of a capital asset (for example property) **other than** NS&I Savings Certificates (see 06021) 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)

06015 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.

06016 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 **£35,500**; or
b) **£22,000** or less

it is not necessary to obtain a precise valuation. If there is any dispute, obtain a precise valuation.

06017 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

06018 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

06019 "Secured on" means a legal charge or mortgage must be made on the actual capital asset.

Example

A resident owns a property which comprises a house and garden (their 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 (i.e. the house, garden and extra land).

06020 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.

NS&I Savings Certificates

06021 The value of NS&I Savings Certificates is:

- 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

- in any other case, the purchase price.

Reg 23(2)

Annex D provides a link to the NS&I website

Disregards on Capital

06022 Different types of capital will be disregarded for different periods as covered in paragraphs 06023 to 06044.

Capital Held Abroad

06023 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

06024 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

06025 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.

06026 Examples of the information required in the valuation are:

- details of the asset
- names of the beneficiaries
- 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

06027 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

06028 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

06029 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.

06030 If restrictions do not exist, the capital should be valued as in 06023 to 6022.

Capital Not Immediately Realisable

06031 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. This will be the value at the time of the financial assessment and will need to be confirmed, and adjustments made,

if necessary, when the capital is realised. If the owner of the capital chooses not to realise the capital use the value at the time of assessment and re-assess at intervals in the normal way.

Disregarded Indefinitely

06032 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 06075)

Schedule 4 para 8

- Any capital which is to be treated as income or student loans (see 06044 to 06047 and 12012 to 12015).

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)
  - Caxton Foundation
  - The Eileen Trust
  - The MFET Limited
  - The Independent Living Fund Scotland
  - The Skipton Fund

- The London Bombings Relief Charitable Fund
- The Caxton Foundation

Schedule 4 para 15

- Any *ex-gratia* payment made from the Advance Payment Scheme set up in respect of cases of historical child abuse in care

Schedule 4 para 28

- Any payment made to an individual, for or in connection with the abuse or neglect of a person (P) whilst P was a child who was under the care or responsibility of a body, society or organisation in Scotland.

Schedule 4 para 29

- The Thalidomide Trust

Schedule 4 para 30

- Any payment made under or by an infected blood payment scheme established by, or under arrangements made with, the Scottish Ministers, the Secretary of State, the Welsh Ministers or the Department of Health in Northern Ireland for making ex gratia payments to or in respect of persons who have acquired HIV or hepatitis C as a result of treatment with blood or blood products within the national health service.

Schedule 4 para 31

- Any payment which would be disregarded under regulation 26 of the Victims' Payments Regulations 2020(2) (disregard of payments and lump sums for certain purposes).

Schedule 4 para 32

Any compensation payment made under Part 1 (the Historical Institutional Abuse Redress Board) of the Historical Institutional Abuse (Northern Ireland) Act 2019(3).

Schedule 4 para 33

- An ex-gratia payment of £20,000 to a former child migrant from the scheme established by Her Majesty's Government for former British child migrants in response to the Investigation Report on Child Migration Programmes (4) by the Independent Inquiry into Child Sexual Abuse published on 1st March 2018, and which opened for applications on 1st March 2019.

Schedule 4 para 34

- Any payment made under the Windrush Compensation Scheme (Expenditure) Act 2020.

Schedule 4 para 35

- Any payment made under the infected blood compensation scheme established by regulations made under section 49 of the Victims and Prisoners Act 2024.

Schedule 4 para 36

- Any payment from a deceased person's estate that comes from a payment under section 56(1) of the Victims and Prisoners Act 2024.

Schedule 4 para 37

- Any payment made under an infected blood support scheme as defined in section 56(3) of the Victims and Prisoners Act 2024.

Schedule 4 para 38

- Any payment from a deceased person's estate that comes from an infected blood support scheme under section 56(3) of the Victims and Prisoners Act 2024.

Schedule 4 para 39

- Any payment made under the Infected Blood Interim Compensation Payment Scheme as defined in section 56(6) of the Victims and Prisoners Act 2024.

Schedule 4 para 40

- Any payment from the Post Office or the Secretary of State for compensation, support, damages, or legal costs related to Horizon system failings, including settlements to avoid or end legal proceedings. In this paragraph "Post Office" and "Horizon system" have the same meaning as in section 9 of the Post Office (Horizon System) Offences (Scotland) Act 2024(7).

Schedule 4 para 41

- Any payment for compensation, support, damages, or legal expenses related to the Grenfell Tower fire on 14 June 2017.

Schedule 4 para 42

- Any payment made under the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme. In this paragraph, the 'LGBT Financial Recognition Scheme' refers to payments for those affected by the ban on LGBT personnel in the UK armed forces (1967–2000).

Schedule 4 para 43

- Any payment made under the Vaccine Damage Payments Act 1979(8).

Schedule 4 para 44

- Any payment to a person's partner that comes from a payment under the Vaccine Damages Payments Act 1979. In this paragraph, 'partner' means a spouse, civil partner, or someone living with the person as if married or in a civil partnership

Schedule 4 para 45

- 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

Schedule 4 para 11

- Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK

Schedule 4 para 12

- An occupational pension

Schedule 4 para 15

- Any rent

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 their 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

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.

- 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 06038)

Schedule 4 para 21

Example

A former 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 £32,000 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 £22,250 In this case £22,000 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 £250.

Disregarded for 12 Weeks

06033 In the case of a temporary resident (Section 3) who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which they would otherwise normally occupy as their only or main residence. (See Paragraphs 07003 to 07005)

Disregarded for 26 Weeks or Longer

06034 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 their home and the legal processes take more than 26 weeks to complete:

- Premises which the resident intends to occupy as their home where they have started legal proceedings to obtain possession (26 weeks from the date they 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 they were a self-employed worker, where they have stopped work due to some disease or disablement, but intends to take up work again when they are 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 their 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

06035 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 Supplement
- Attendance Allowance
- Constant Attendance Allowance
- Disability Living Allowance
- Personal Independence Payments (PIP)
- Adult Disability Payment, including short term assistance component
- Exceptionally Severe Disablement 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/Universal Credit/Pension Credit
- Minimum Income Guarantee
- Tax credit
- Housing Benefit
- Universal Credit
- 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/Universal Credit/Pension Credit. It is explained to the resident that the charge will be re-assessed once Income Support/Universal Credit/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 Income Support/Universal Credit /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 is £120 rather than the full £210 Income Support/Universal Credit

/Pension Credit arrears. The remaining £90 becomes capital and is disregarded for 52 weeks.

06036 Amendments to Income Support (General) Regulations 1987, taking effect on 14 October 2002 changed the way in which payments of arrears of benefits and related concessionary payments are treated within the financial assessment. However, with effect from 28 February 2003, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2003 amended the Income Support (General) Regulations to reinstate the position as at -14 October 2002 on treatment of arrears. In terms of this payment of such arrears is disregarded from the financial assessment for 52 weeks only. This will include, where appropriate, payments of arrears of Universal Credit.

06037 Payments relating to the interim period between 14 October 2002 and the 28 February 2003, when the 2003 regulations took effect, should be treated in accordance with the position as it applied on 14 October. 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

Disregarded for 2 Years

06038 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 06032):

- 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 the ages of 16 and 19) – but with a minimum of 2 years.

Schedule 4 para. 21

Disregarded for other periods

06039 Assets of a business-owned (or part-owned) by the resident in which they have ceased to be a self-employed worker, for a reasonable period to enable them to dispose of the business assets. (See 06040 onwards)

Schedule 4 para 5

Meaning of Reasonable Period of Disregard

06040 It is not necessary for a person to have taken steps to realise their share of a business in order to qualify for a disregard. But they should be required to show that it is their clear intention to realise the asset as soon as practicable.

Information required

06041 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

06042 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.

06043 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

06044 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 their accommodation or, in the case of a temporary resident whom the local authority has decided not to charge (as per para 3005), 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 **£22,000,** treat the instalments as income.

If it is **£22,000** or less, treat each instalment as capital

Reg 16(1)

Payments under an Annuity

06045 Any payment under an annuity will be treated as income (see 08013). 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

06046 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 06055 for payments to clear arrears).

Reg 16(4)

Earnings

06047 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

06048 The types of income in the following paragraphs should be treated as capital.

Tax Refunds

06049 Any refund of income tax charged on profits of a business or earnings of an employed earner.

Reg 22(2)

Holiday Pay

06050 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

06051 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 08017)

Reg 22(4)

Bounty Payments

06052 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

06053 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

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

06054 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

06055 Payments in 06054 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 08078).

Arrears of contributions to a child's custodian

06056 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

06057 The treatment of trust funds, both capital and the income from the trust, is dealt with in Section 10.

Property

06058 The treatment of property is dealt with in Section 7.

Notional capital

06059 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

06060 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

06061 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.

06062 Notional capital may be capital:

a) which would be available to them if they applied for it;
b) which is paid to a third party in respect of the resident;
c) of which the resident has deprived themselves in order to reduce the amount of charge they have to pay.

Capital available on application

06063 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)

06064 The local authority should distinguish between

a) capital already owned by the resident, but which in order to realise they must make an application for, for example:

- money held by the resident's solicitor
- Premium Bonds
- National Savings Certificates; **and**

b) capital **not** owned by the resident, but which will become theiron application being made,

for example: an unclaimed Premium Bond win.

In the case of A. the resident has the **actual** capital but not the notional capital. In the case of B. the resident has no actual capital but should be treated as having **notional** capital.

Date to be taken into account

06065 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.

Deprivation of Capital

General

06066 The local authority may feel that a resident has deprived themself of a capital asset in order to reduce their 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)

06067 Pension Credit includes slightly more relaxed notional capital rules compared with Income Support/Universal Credit. In Income Support/Universal Credit, individuals must be treated as if they still possess capital in circumstances where they have deliberately deprived themselves of it in order to maximise their benefit entitlement. The AOR Regulations do not impose this, and it is within the local authority's discretion to decide whether or not to treat the resident as still possessing the capital. 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 also has 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/Universal Credit though there is discretion on whether to treat a person as having deprived themselves of capital.

Forms of capital to be considered

06068 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.

Example

A resident gives a diamond ring worth £2,000 to their adult child the week before they enter 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 their adult child with £2,000 which had previously been in a Building Society account, deprivation should be considered.

Ownership

06069 The local authority should decide from available evidence whether the resident owned the capital (see 06011 and 06012 for details of ownership).

Has deprivation occurred?

06070 It is up to the resident to prove that they no longer have a resource. Failure to do so will result in the local authority treating the resident as if they still possess 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.

06071 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 their capital in such an investment bond so that it would be disregarded for the purposes of the Assessment of Resources Regulations.
- Excessive sums of money have been paid into a funeral plan contract.

Purpose of disposing of an asset

06072 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.

06073 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 their spouse or civil partner. The local authority ignores 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 their 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 themself of capital in order to reduce their residential accommodation charge.
- A person has £24,000 in the bank. They are 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 them as having deprived themself of the £3,500 deliberately in order to reduce their residential accommodation charge.
- A resident has £18,900 in a building society. Two weeks before entering the home, they bought a car for £10,500 which they gave to their adult 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

06074 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 their charge for accommodation when the disposal took place at a time when they were 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

06075 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 06027.

06076 If the resident, in depriving themself of an actual resource, converted that resource into another actual resource of lesser value, they 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

06077 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

06078 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 they are paying for the accommodation and the rate they would have paid if they were 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 £7,000. This results in them having to pay the standard charge of e.g. £500.

- If they did not possess the notional capital, their capital would not affect their ability to pay for the accommodation so, based on an income of £123.40 and a personal allowance of, for example, £26.40 they would be assessed as paying a charge of £97.
- If the resident is under 65 and not eligible for free nursing care, the notional capital should be reduced by £403 per week i.e. the difference between the sum they have to pay because of the notional capital (£500) and the charge they would have had to pay if the notional capital did not exist (£97).
- If the resident is eligible for the free personal care payment of, for example £177 per week, the notional capital should be reduced by £323 per week i.e. the difference between the sum they have to pay because of their notional capital (£500-£177= £323) and the charge they would have had to pay if the notional capital did not exist (£97)

SECTION 7 - TREATMENT OF PROPERTY

General

07001 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 07007.

Property to be disregarded

07002 The value of a dwelling normally occupied by a resident as their home should be ignored if their stay in a care home is temporary and

- they intend to return to the dwelling, and the dwelling is still available to them,

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 their home should be treated in the same way as if he had been temporary from the outset.

Schedule 4 para 1

12-Week Disregard on permanent entry to Residential Care

07003 To ensure any disregards are carry out efficiently, it is necessary to ensure there is effective and open communications between local authorities, service providers and service users at all times. This is especially so, when and if the person moves from temporary residency to permanent residency.

07004 In the case of a resident who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which they would otherwise normally occupy as their 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.

07005 The disregard provides limited state financial support to people who enter residential accommodation and offers residents a breathing space between entering a care home on a permanent basis and deciding how best to fund the move, or whether to return to their own homes.

07006 In particular local authorities will need to be aware of the following:

a) If a person is firstly considered temporary, the property is disregarded (schedule 4 para 1 of the 1992 Regulations). Once the stay has been confirmed as permanent then the property will be disregarded under the new provisions for a further 12 weeks.

b) The disregard is for 12 weeks from the moment that **permanent** admission to residential accommodation commences. This may follow a temporary stay.

c) The local authority will determine if a person is eligible for the disregard. People will be eligible if:

- they entered or commenced permanent accommodation on or after 9 April 2001; **and**
- after assessment the local authority confirms that an applicant is in need of permanent residential accommodation and takes over the arrangements for it.

d) A resident is entitled to the 12-week disregard irrespective of the amount of their remaining assets after the value of their property has been disregarded from the financial assessment. However, a resident may still be required to contribute towards their care home fees from their remaining capital if it exceeds the lower capital limit **£22,000**. The contribution made by the resident towards these costs will be calculated according to the residential care charging financial assessment.

e) It can be claimed from the local authority up to 12 weeks following admission to permanent residential care. Local authorities should make their assessment of applications without undue delay. However, delays on the part of the local authority that go beyond 12 weeks following permanent admission do not affect a resident's entitlement to the disregard. If the application is successful, the 12-week disregard applies from the date of permanent admission, not the date of the claim.

f) If people sell their homes within 12 weeks, the disregard ceases to have effect from the date of the sale.

g) 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.

h) A resident may be required to contribute towards their care costs in the first 12 weeks of permanent stay in a care home if they're remaining capital exceeds the lower capital limit of **£22,000**.

Action Required to Implement Disregard

07007 Local authorities should:

a) Make detailed information about the disregard available to people who are considering, entering or commencing permanent stays in residential accommodation.

b) Take account of the 12-week property disregard when making assessments and financial assessments for permanent residential accommodation. If eligible, apply Charging for Residential Accommodation Guidance to residents' income and other assets.

c) Consider 12-week contracts with care homes to cover the 12-week property disregard. The local authority should consider contractual terms which enables contracts for the 12-week property disregard to be terminated before the end of the 12 weeks on the earlier sale of the resident's property. At the end of the 12 weeks, local authorities will need to consider whether the value of residents' assets (including property) mean they no longer need local authority support other than their assessed entitlement to free personal and or nursing care. (Local authorities will continue to support and maintain contracts for those residents who, although they pay the full costs of their care, lack the capacity to make their own arrangements).

d) Ensure that admissions to residential accommodation are deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such neither local authority nor residents' resources should play a part in the decision.

e) Bear in mind that if people are admitted to residential accommodation on the basis that they will return home or where there is uncertainty over the permanence of their admission, they should be deemed "temporary" (in which case the value of their property is automatically disregarded from the financial assessment).

Other Disregards of Property

07008 Where the resident no longer occupies a dwelling as their 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 07009) or a member of his family (as defined at 07010) 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

07009 The term "relative" in paragraph 07008 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.

7010 The term "family" in paragraph 07008 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"

07011 The meaning of "incapacitated" in paragraph 07008 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 or Incapacity Benefit, Severe Disablement Allowance, Disability Living Allowance, Personal Independence Payment (PIP) / Adult Disability Payment, Attendance Allowance, Constant Attendance Allowance, or an analogous benefit;

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

07012 Where the resident has acquired property which they intend to eventually occupy as their 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

07013 Where the local authority considers it reasonable to do so, they can disregard the value of premises this section covers where 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

07014 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

Ownership and beneficial interest

07015 The treatment of property will depend on whether the resident is the owner or has a beneficial interest in the property. A legal owner is a person in whose name the property is held. A person with beneficial interest in a property is one who is entitled to receive the profits or proceeds from the property.

Legal ownership

07016 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 the owner but has no beneficial interest in the property i.e. the resident is holding the property on trust for a beneficiary or beneficiaries and has no right to the proceeds or profits should the property be sold.

Beneficial interest

07017 Where the resident is the sole beneficiary 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 06010 (expenses of sale and debts secured on the asset), is over **£35,500** or when added to any other capital assets will take the total capital over **£35,500**, 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 beneficiaries of property

07018 Where a resident is a joint beneficiary of property, i.e. they have 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:

A. the resident's ability to re-assign the beneficial interest to somebody else

B. there being a market i.e. the interest being such as to attract a willing buyer for the interest.

Reg 27(2)

07019 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.

07020 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 their 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.

07021 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. Where there are doubts, it may be necessary to consider 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. They share 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 their 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 their share to cover the cost of transferring the interest to the buyer.

Property held in a shared trust

07022 Where a property is held in Trust and the resident is both a joint trustee **and** joint beneficiary, they legally own the property as a trustee of the Trust, but purely on a "fiduciary" basis i.e. they are legally obliged to administer the Trust for the benefit of the Trust - as a whole, and not for their own particular purposes. Their real interest is that of a beneficiary and falls to be valued accordingly (paragraphs 07012 to 07014).

Sale of jointly owned property

07023 See the example at 06073 for the consideration of deprivation of capital where a jointly owned property is sold and the resident passes some of their share of the proceeds to the joint owner.

Property owned but rented to tenants

07024 Where a resident owns property, the value of which takes the resident's total capital above **£35,500**, 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

07025 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 07026 to 07033)

Deferred Payment of Care Home Fees

07026 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 Community Care Circular CCD 13/2004: Deferred Payment of Care Home Fees

Eligibility for Deferred Payment Agreements

07027 Eligibility is restricted to any person who:

a) has been assessed as needing a care home place;

b) has capital at or below **£22,000** when their resources, excluding their home are assessed;

c) would not normally have their home disregarded from such a financial assessment. (See 07002 to 07014). (This restriction only applies to deferral of the relevant portion of 'normal' care costs.);

d) does not wish to sell their home or is unable to sell it quickly enough to pay for their care home fees; and

e) can grant the authority a standard security against their 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.

Discretion to defer payments

07028 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.

07029 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

07030 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

07031 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 their home (taking account of any payments due for personal or nursing care); and

b) the amount they 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

07032 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 08020-08026)

The Community Care (Deferred Payment of Accommodation Costs) (Scotland) Regulations 2002. Regulation 4

Interest on Deferred Payments

07033 Deferred payments will be interest-free until the agreement is terminated by the resident or 56 days after their 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?

08001 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).

08002 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

08003 Income is treated in one of three ways:

a) taken into account in full;
b) partly disregarded; or
c) fully disregarded.

08004 Paragraphs 08005 to 08064 below list the types of income in each category, and provide further details where necessary.

Income taken fully into account

08005 The following types of income are taken into account in full:

- Most Social Security benefits (08006)
- Annuity income (except home income plans) (08013)
- 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 08049 for other cases)
- Home Office **ex gratia** incapacity allowances
- Income from certain disregarded capital (08017)
- Income from an insurance policy (except mortgage protection insurance) (08018)
- Income from certain sub-let (08019)
- Occupational Pensions
- Refund of income tax

- Third party payments made under an agreement to meet excess fees (08020)
- Trust income (see **Section 10**)
- War Orphan's pension.

Reg 15(1)

Social Security benefits

08006 The Social Security benefits listed below are taken fully into account. However, see 08054 for the treatment of certain dependency increases.

- Attendance Allowance (AA) / Disability Living Allowance (Care Component) (this also includes Personal Independence Payment (PIP) / Adult Disability Payment (ADP) paid to **permanent** residents. See 03024 for treatment of AA / DLA(Care) / PIP / ADP paid to **temporary** residents.
- Child Benefit where the child is accommodated with the resident under Part III of the National Assistance Act 1948 (see 08049).
- 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 08033 and 08050 for exceptions)
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit (IIDB) (08008) - see also above and 03024 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 (08009 - see also above and 03024) for CAA and ESDA paid with these payments
- Retirement Pension 08010
- Severe Disablement Allowance

- Universal Credit
- Widow's benefit widow's pension (WP) and widowed mother's allowance (WMA)) (08011). See Section 6 (Capital) for treatment of widow's payment (WPT)
- Workmen's compensation (08012 - see also above and 03024) for treatment of AA/CAA paid under the Workmen's Compensation Act.

Reg 15(1)

Deductions from benefits

08007 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)

08008 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 03024). REA is taken fully into account.

Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme

08009 These payments are made to people who are not entitled to workmen's compensation (08012) or IIDB (08008). They are taken fully into account. AA may be paid with these payments – (see 03024 and 08006).

Retirement Pension

08010 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 03024 and 08006 for treatment of AA).

Widow's benefit (Widow's Pension (WP) and Widowed Mother's Allowance (WMA))

08011 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

08012 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 03024 and 08006) for treatment of AA.

Annuity Income

08013 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.

08014 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 08025 to 08030); or
B. a gallantry award e.g. Victoria Cross Annuity, George Cross Annuity *(fully disregarded - see paragraph 08056).*

Income from Investment Bonds

08015 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.

08016 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 their accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed **£22,000**. (See also 06003, 06004 and 06005)

Income from certain disregarded capital

08017 Income from capital will generally not be treated as income (see 06051). 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 03019 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 their home and which they are 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 their home and in respect of which they are taking legal steps to obtain possession
- any premises which the resident intends to occupy as their 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 08048.

Schedule 3 para 14

Income from insurance policies

08018 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 08044).

Income from certain sub-lets

08019 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 08042.

Payments made to meet higher fees/Topping-up of Care Home Fees

08020 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 rules, set out in the 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

08021 Top-ups can be made by a third party such as a relative or a friend, there are no restrictions on the resources that a third party may use for topping up.

Top-ups by the Resident

08022 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

08023 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 Section 9)
B. Income disregarded under the residential care financial assessment. (See Section 8)
C. Capital disregarded under the residential care financial assessment. (See Section Six) but excluding the disregards relating to the resident's former home.
D. For people benefiting from the twelve-week property disregard, capital over **£22,000**, but only for the duration of that disregard.
E. For people with a deferred payment agreement, capital over **£35,500** 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 **£35,500** 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

08024 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

08025 It may also be possible, subject to certain restrictions, for a resident to defer part of or all of any agreed top-up. (See 07033)

08026 Other payments made by a third party should be treated in accordance with paragraphs 08067 to 08073.

Trust income

08027 See **Section 10**

Income partly disregarded

£10 disregard

08028 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

Overall disregard

08029 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

The Savings disregard

08030 A savings disregard based on qualifying income was introduced on 6 October 2003 and subject to the qualifying conditions detailed at **Annex H**.

For individuals aged 65 and over

- where a resident is in receipt of qualifying income of less than **£198.27**[3] per week there will be no savings disregard made.
- where a resident is in receipt of qualifying income between **£198.27** and **£227.10**[4] per week, the single savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of **£8.50**, whichever is less.
- where a resident is in receipt of qualifying income in excess of **£227.10** per week, and a savings credit reward is in payment, a flat rate savings disregard of **£8.50** 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 say of £**227.80** (this could be higher, depending on individual circumstances), a flat rate single savings disregard of **£8.50** is made.

For couples

- where a resident who is part of a couple and is in receipt of qualifying income of less than **£314.34**[5] 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 **£314.34** and **£346.60**[6] per week, the couple savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of **£12.60**, whichever is less.
- where a resident who is part of a couple and is in receipt of qualifying income in excess of **£346.60** per week, and a savings credit reward is in payment, a flat rate savings disregard of **£12.60** 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 **£319.20** (but could be higher depending on individual circumstances) a flat rate couple savings disregard of **£12.60** is made.

08031 The values of **£227.10** and **£346.60** 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**.

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[3] Savings Credit: Threshold - single (2025/26)

[4] Standard minimum guarantee - single (2025/26)

[5] Savings Credit: Threshold - couple (2025/26)

[6] Savings Credit: Threshold - couple (2025/26)

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

08032 Varying amounts are disregarded from the following types of income:

- Occupational pensions, personal pensions and payments from retirement annuity contracts (08033)
- Certain charitable payments (08053)
- Annuity income from a home income plan (08036-08041)
- Income from sub-letting (08042)
- Mortgage protection insurance policies (08044-08047)
- Income from certain disregarded capital (08048).

Occupational pensions, personal pensions and retirement annuity contracts

08033 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 their spouse. If the resident passes less than 50 per cent of any of these payments, or none of them, to their 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

08034 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 05005). 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 05005).

08035 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 their income. Of the occupational pension actually in payment to the resident 50 per cent should be disregarded in accordance with 08033.

Annuity income from home income plan

08036 There are different types of annuity plans (see paragraphs 08013 to 08014). 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 their home obtains a loan secured on the property. They use part of the loan (or all of it) to buy an annuity which provides an income. They 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.

08037 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 their 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.

08038 Where neither the resident nor any other annuitant occupies the dwelling as their 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 their 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.

08039 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 08040). 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.

08040 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;

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 their home at the time the interest is paid.

08041 Where the resident is using part of the annuity income to repay the loan, disregard the amount they pay 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

08042 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 their home. This will therefore apply only to assessing a temporary resident. The disregard is shown in **Annex A**. See also paragraph 08019 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

08043 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 their 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

08044 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

08045 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.

08046 The income from the policy **must be** being used to meet the repayments on the loan.

08047 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/Universal Credit/Pension Credit may be adjusted to take account of the income from the policy, so income previously disregarded under 3009 or 8040 may no longer be in payment.

Income From Certain Disregarded Capital

08048 Where income is received from certain property of which the capital value is being disregarded (see 08017), 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

08049 The following types of income are fully disregarded:

- See 03024 for the treatment of AA / DLA (Care) / PIP / ADP for temporary residents and 08006 for permanent residents
- That part of an Income Support / Universal Credit / Pension Credit award which is paid in respect of home commitments for temporary residents (08050)
- 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.

- One-off payments received in the transfer of benefit recipients from the Department of Work and Pensions to Social Security Scotland.

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 on 31 March 2003.
- Certain charitable and voluntary payments (08067)
- 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 (08052)
- 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 Caxton Foundation
    - The Fund (payments to haemophiliacs infected with HIV)
    - The Eileen Trust
    - The Skipton Fund
    - The Independent Living (2006)
    - The MFET limited
    - The London Bombings Relief Charitable Fund
    - Council Tax Benefit

- Disability Living Allowance (Mobility Component) and
- Mobility supplement
- Dependency increases paid with certain benefits (08054)
- Gallantry awards (08056)
- Income frozen abroad (08057)
- Income in kind (08058)
- Social Fund payments (including winter fuel payments)
- Certain payments made to trainees (08058A)
- War disablement pension (08060)
- Armed Forces Compensation Scheme (08061)
- War widows and widower's special payments (08046)
- Work expenses paid by employer, and expenses paid to voluntary workers (08049 and 08050).
- The payment scheme for the section 51A of the Adoption (Scotland) Act 1978
- The Thalidomide Trust
- Any infected blood payment scheme in respect of persons who have acquired HIV or hepatitis C as a result of treatment with blood or blood products within the national health service.
- Victims' Payments Regulations 2020 Payment Scheme.
- The Historical Institutional Abuse Redress Board of Northern Ireland.
- The Child Migrants Trust.

Income Support/Universal Credit/Pension Credit paid for home commitments

08050 Under the Income Support/Universal Credit/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.

08051 Any Income Support/Universal Credit/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/Universal Credit/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

08052 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 Caxton Foundation, The Fund, the Eileen trust, the MFET Limited, the Independent Living Fund Scotland, the Skipton Fund London Bombing Relief Fund or The Thalidomide Trust

08053 Payments from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Caxton Foundation, the Eileen Trust, the MFET Limited, the Independent Living Fund Scotland, the Skipton Fund, London Bombing Relief Fund or The Thalidomide Trust 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 Living Fund Scotland should cease when someone enters residential accommodation on a permanent basis.

Schedule 3 para 24

Dependency increases paid with certain benefits

08054 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

08055 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

08056 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

08057 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

08058 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

08059 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 Disablement Pension

08060 War disablement pension may include various additions and increases. Disregard the full amount.

Armed Forces Compensation Scheme

08061 The Armed Forces compensation scheme may include various additions and increases. Disregard the full amount.

War widows and war widowers' special payments

08062 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.

08063 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 widower's 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 widower's 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.

08064 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 Service Personnel and Veterans Agency, Norcross, Thornton Cleveleys, Lancashire, FY5 3WP (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

08065 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

08066 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

08067 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.

08068 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)08053

08069 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

08070 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 08022.

08071 Disregard £20 of any other payment which is not intended for any specific item subject to the overall disregard mentioned at 08022.

Schedule 3 para 10

Full disregard

08072 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 their 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

08073 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 08020 to 08027.

Schedule 3 para 29(6)

Income treated as capital

08074 Certain forms of income are treated as capital - see 06038 to 06045 for details.

Reg 22

Notional Income

08075 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:

i. income which is paid to the local authority by a third party under
ii. an agreement to contribute towards the fees of a home.
iii. income which would be available on application
iv. income which is due but has not yet been paid
v. 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

08076 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

08077 Notional income is calculated and treated in the same way as actual income.

Payments to the local authority by a resident or third party

08078 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.

08079 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. (08021 to 08026)

08080 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 06055), 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.

08081 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 their accommodation.

Income available on application

General

08082 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.

Reg 17(2)

Amount of income

08083 Payments of the following cannot be taken into account as notional income:

a. Income payable under a discretionary trust
b. Income payable under a trust derived from a payment made in consequence of a personal injury
c. Working Tax Credit

d. Also income which would be fully disregarded should not be included as notional income, for example Housing Benefit, DLA (mobility) /PIP/ADP and refund of income tax.

08084 Income which is subject to the awarding authority's discretion, i.e. the resident has no right to payment shall also not be taken into account.

Reg 17(2)

08085 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 cannot assume are satisfied.

Reg 17(2)

08086 All other income should be considered. **Examples** of income which may be treated as belonging to the claimant are

a. unclaimed councillors attendance allowance
b) unclaimed Social Security benefits
a. occupational pension not claimed.

Date taken into account

08087 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:

a) assume the application was made on the date the local authority first became aware of the possible income; **and**
b) take into account any time limits which might limit the period the period of arrears.

Reg 17(2)

Examples

A resident aged 69 is not receiving a retirement pension, to which they would have been entitled had they applied. The local authority becomes aware of the possible entitlement on 30/9/2018. As retirement pension can only be backdated a year from date of claim, the local authority only takes it into account as income from 1/10/2018.

The local authority become aware that a resident aged 64 is not receiving an occupational pension to which they would have been entitled from the age of 60. On their 65th birthday their former employers state that they 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

08088 Where a resident, aged 60 or over, has a personal pension plan and they have 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. Jobcentre Plus / the Pension Service will contact the pension provider for details of the income which could be payable where Income Support/Universal Credit/Pension Credit is claimed. For Income Support**/**Universal Credit/Pension Credit claimants LAs should liaise with Jobcentre Plus/ the Pension Service 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

08089 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:

a. income payable under a discretionary trust
b. income payable under a trust derived from a payment made in consequence of a personal injury
c. occupational pension which is not being paid, because:

I. the trustees or managers of the scheme have suspended or ceased payments due to insufficiency of resources, or
II. the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

Reg 17(2)

08090 Examples of where to take into account income, which is due to the resident, but which has not been paid are:

A. superannuation or other income due but not yet paid (for example, because of a strike by pay clerks)
B. pension or grant which has ceased temporarily, for example due to a postal strike.

Deprivation of income

08091 A resident is to be treated as possessing income of which they have deprived themselves **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 their income from retirement pension and occupational pension. When reviewing the charge the local authority find that they have sold their right to receive the occupational pension

thereby reducing the charge they are 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

08092 A person will have deprived themself of a resource if, as a result of their own act, they cease to possess that resource.

Questions for consideration

08093 Where the resident appears to have deprived themself of income the local authority should consider the questions covered in the following paragraphs:

Was it the resident's income?

08094 Where a person, before they deprive themself of an income, is in receipt of that income it is reasonable to assume that the resource belonged to them. 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?

08095 Deprivation will have occurred if a person relinquishes, or transfers to another person, an income which:

i. they have been receiving or are due to receive **and**:
ii. would have continued to receive had they not relinquished or transferred it.

08096 It is up to the resident to prove that they no longer have the income. If they 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

08097 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

08098 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.

08099 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 six-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

08100 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:

i. the amount of the former income resource **or**

ii. 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

A resident sold the right to receive an income under an annuity of £10 per week for £2,800. Having no other capital the £2,800 did not affect the resident's assessment of charges. The local authority (LA) decided that the resident sold the right to receive the income for the purpose of reducing their assessed charge and treated the resident as receiving £10 per week notional income.

A resident sold the right to receive income under an annuity of £30 per week for £5,000. The resident's other capital was £16,000 and so the total capital of £21,000 produced a tariff income of £16 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing their assessed charge and treated the resident as notionally receiving the £14 difference between the tariff income and the original £30, per week from the annuity.

A resident sold the right to receive income under an annuity of £10 per week for £2,000. The resident's other capital of £17,500 produced a tariff income of £2 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. £2,000 ÷ £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

08101 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)

08102 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?

09001 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 their 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.

09002 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

09003 "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

09004 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

09005 An occupational pension scheme is one which provides benefits payable on termination of service, or on death or retirement.

Personal pension

09006 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

09007 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
d) 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

09008 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

09009 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/Universal Credit/Pension Credit in payment

09010 Where a resident, who is getting Income Support/Universal Credit/Pension Credit, receives a payment of earnings which is not for a set period the

appropriate DWP office will calculate a number of weeks for which Income Support/Universal Credit/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/Universal Credit/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)

Income Support/Pension Credit not in payment

09011 Where Income Support/Universal Credit/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

They receive a payment (**C**) of £750, in respect of which they 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 ÷ (B - A) = 5.77 weeks

The resident pays the standard charge of £250 less the £20 disregard for weeks (i.e. they pay £230 which is £110 more than they were paying.

At the end of five weeks they have used up £550 (5 x £110) and has been allowed to keep £100 (5 x £20).

They therefore have £100 of the £750 left to be taken into account in week 6, less the £20 disregard.

Net earnings of self-employed earners

09012 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

09013 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 from the start of self-employment or the date of change by averaging the earnings over whatever period is going to result in the fairest assessment of earnings for the resident. Every effort should be made to estimate fair weekly earnings until sufficient information is available to make a more accurate calculation. The normal annual reassessment process should apply with more frequent reviews upon request, should there be regular variations in earnings.

09014 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

09015 Where the resident receives royalties or fees from copyright irregularly, the period of weeks over which the payment should be taken into account follows the process set out in 09010 and 09011.

Reg 18(2)

Disregards

09016 The amount of earnings to be taken into account in the assessment is the net amount calculated in accordance with paragraphs 09001 to 9016 above, less the appropriate disregard.

09017 Disregard £5 of the net weekly earnings unless the resident qualifies for a different disregard under paragraph 09019 to 09022 or a discretionary disregard under paragraph 02004.

Schedule 2 para 4

People entitled to a £20 disregard

09018 Disregard £20 of the net weekly earnings if the resident:

a) receives Income Support/Universal Credit/Pension Credit which includes a disability premium a carer's premium;

or:

b) is under 60 and receives:

I. receives one of the following benefits:

- Disability Living Allowance (mobility or care components at any rate)/Personal Independence Payments / Adult Disability Payment
- 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 the National Health Service Act 2006 (previously 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 2006 (previously 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. (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

09019 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

09020 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

09021 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

10001 This section does not apply to the Macfarlane Trust, the Macfarlane (Special Payments) Trust the Macfarlane (Special Payments) (No 2) Trust, the Caxton Foundation, the Eileen Trust, the Fund, the MFET Limited, the Skipton Fund and the London Bombing Relief Fund. See paragraph 08053.

What is a trust?

10002 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)).

10003 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

10004 Trustees may be:

- a professional person such as a solicitor
- the parents of a beneficiary who cannot act for themself
- any other responsible person, perhaps appointed under the terms of a will.

10005 Trustees' powers are governed by:

i. the terms of any trust deed;
ii. the common law in Scotland and the law of equity in England and Wales; and
iii. 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

10006 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

10007 A resident's interest in a trust could take one of two forms:

i. they have absolute entitlement to capital or income from the trust (10008 to 10018).

or:

ii. the trustees have discretion to make payments of capital or income to them. (10019 to 10022).

Information needed

10008 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

10009 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 their affairs.

Information needed

10010 Where the beneficiary is absolutely entitled to money from the trust (i.e. has an unconditional right), find out whether they are entitled to:

a) any capital held in trust; and
b) any income produced by the trust assets.

Absolute entitlement to capital

10011 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 their **actual** share, treat them as owning that actual amount.

10012 Where the resident is not in possession of capital to which they have absolute entitlement, but the capital would become available to them upon application being made, treat them as possessing an actual capital asset. See Section 6 (Capital).

10013 Some trusts provide for the beneficiary to become absolutely entitled to the trust capital on a specified date, for example their 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.

10014 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.

10015 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 **£35,500**; or

b) less than **£22,000**

it will not be necessary to obtain a precise valuation of the trust.

Absolute entitlement to income

10016 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 10018 for treatment of the income).

Schedule 4 para 13

10017 A person who has a contingent interest in capital (as in paragraph 10012) becomes absolutely entitled to receive the income from the capital on their 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 10016.

10018 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

10019 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

10020 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

10021 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).*

10022 Payments from a discretionary trust are effectively voluntary payments. Treat them in accordance with the normal rules for the treatment of voluntary payments *(paragraphs 08067 to 08073).*

10023 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 08067 to 08073).*

Compensation for personal injury

Information needed

10024 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

10025 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

10026 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

10027 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.

10028 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

11001 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

12001 Students may have different types of income which will be treated in different ways.

Student Support

Sources of student income

12002 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 £2,000 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 available will include amounts for various specific purposes, such as personal maintenance, travelling expenses and books.

Period over which student support should be taken into account

12003 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

12004 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

12005 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)

12006 The total living cost support available includes the student's, parents', spouse or partner's contribution, as appropriate.

Reg 35

Student loans

12007 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 Government.

Eligibility for student loans

12008 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

12009 The amount for which the student is eligible is always the maximum according to their circumstances. If the student has taken none, or only part, of the loan this will be by their own choice. If the student is eligible for a loan (see 12013 above) it will be taken into account whether or not the student has taken the loan.

Reg 39

12010 The maximum amount of student loan will depend on

- where the student is studying (London, elsewhere or living at home);
- the number of weeks studied;
- 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

12011 The weekly amount of loan income should be calculated by dividing the appropriate maximum loan

a) 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.
b) 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

12012 Up to £10 of the weekly income from a student loan should be disregarded

Reg 39

Discretionary Funds (previously know as Hardship funds)

12013 Discretionary funds provided by the Scottish Government 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

12014 Payments made at regular intervals should be treated as a voluntary payment and be subjected to a £20 disregard.

Reg 40(1)

12015 Payments paid, or due to be paid, at irregular intervals should be treated as capital.

Reg 40(2)

SECTION 13 - TRANSITIONAL PROVISIONS

13001 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.

13002 Local authorities should keep archive copies of Transitional Provisions guidance to refer to should any resident query their past assessments.

Annex A

Template for Route 2 Contract for those receiving Free Personal Care and/or Nursing Care between Local Authorities and Independent Sector Care Homes

LOCAL AUTHORITY	

Contract for the provision of personal and nursing care for Route 2 - Free Personal/Nursing Care Supported person

Name of Service provider	
In respect of (Name of Supported Person)	

For a short term placement / long term placement (delete as applicable)

Local Authority

.....

Address

.....

.....

.....

.....

I/We HEREBY OFFER to provide the Services to the Supported Person on the terms and conditions as set out in the Schedule, for the Contract Price, payable by you for Personal Care / Nursing Care / Personal Care and Nursing Care (delete as applicable).

To the best of my/our knowledge and belief I/we have complied with all statutory requirements in respect of ensuring equal opportunity in employment.

I confirm that a copy of the Contract will be given to the Supported Person at the commencement of the Care.

Signed .....

Date .....

Name of signatory (in block capitals)	
Position of signatory	
Name(s) under which the Home is registered with the Care Inspectorate (hereinafter referred to as "the Service provider".	
Address under which the Home is registered with the Care Inspectorate (if different from below)	
Name of Supported Person	
Address of Care Home	
Company Registration No. (if applicable)	

This is the Schedule referred to in the foregoing Offer between the Service Provider and the Local Authority

Terms and Conditions of Contract for Personal Care and Nursing Care

INDEX

1. Definitions, interpretations and related matters
2. Pre-Conditions
3. Duration of Contract
4. Services to be provided
5. Payment
6. Assessment and Care Management
7. Monitoring and Review of Supported Person's Care Needs
8. Contract Monitoring
9. Complaints
10. Registration
11. Confidentiality
12. Insurance
13. Statutory Obligations
14. Temporary Absence from Care Home
15. Death of Supported Person
16. Assignation and Sub Contracting
17. User Agreements
18. Termination of the Contract
19. Resolution of Disputes
20. Notices
21. Prevention of Corruption and Collusion
22. Variations
23. Law of Scotland
24. Exercise of Powers
25. Entire Agreement

TERMS AND CONDITIONS OF CONTRACT

INTRODUCTION

The Contract is entered into by the Local Authority and the Service Provider for the purpose of securing appropriate and adequate Care for the Supported Person who has, or will have, arranged their own supported residential accommodation with a Service Provider by Private Agreement.

1. DEFINITIONS, INTERPRETATIONS AND RELATED MATTERS

1.1 In the Contract:-

"Care" means personal care and/or nursing care.

"Care Needs Assessments" means the assessments undertaken by the Local Authority's Social Work staff.

"Care Home" means the whole buildings and associated lands used as a Care Home, by the Service Provider, and may include any alternative accommodation approved by the appropriate authority in the event of an emergency, for the purposes of temporarily accommodating all or any part of the management, staff and Supported Persons thereof.

"Care Inspectorate" means Social Care and Social Work Improvement Scotland (SCWIS)

"Care Manager" means the person appointed by the Local Authority to monitor the Care provided to the Supported Person by the Service Provider.

"Contract" means the foregoing Offer incorporating the Schedule and the Local Authority's written acceptance thereof.

"Contract Price" means:

a. where Personal Care only is provided, the amount from time to time set out at regulation 2(a) of the Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002

b. where nursing care only is provided the amount from time to time set out at regulation 2(b) of those Regulations, and

c. where both kinds of care are provided, the aggregate of the two amounts

"Complaints Procedure" has the meaning set out in regulation 25 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.

"Health and Social Care Standards" means the standard of care set out in "Health and Social Care Standards" published by the Scottish Government.

"Local Authority" means Local Authority, a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994

"Parties" means the Local Authority and the Service Provider and "Party" shall be construed accordingly.

“Personal Care” means care as defined in Section 1 of Schedule 1 of the Community Care and Health (Scotland) Act 2002 and Section 20 of Schedule 12 of the Public Services Reform (Scotland) Act 2010.

"Personal Plan" has the meaning set out in regulation 5 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.

“Private Agreement” means any agreement entered into between the Service Provider and the Supported Person, which sets out the residential terms and conditions of the Supported Person’s residence in the Care Home.

“Service Provider” has the meaning ascribed to it in the foregoing Offer.

“Registration” means registration of the Care Home with the Care Inspectorate.

“Representative” means any person nominated by the Supported Person to be first contacted or advised by the Service Provider, and the Local Authority, regarding the Supported Person’s circumstances, or any significant change thereto, who shall, in the event of the Supported Person failing to nominate any such person, be the Supported Person’s next of kin or attorney (if any).

“Schedule” means this Schedule to the Contract.

“Service Provider” means the Party who is providing the service in terms of the Contract.

“Services” means the Care provided in accordance with the terms and conditions of the Contract.

“Supported Person” means the person to whom the services are provided in terms of the Contract.

1.1. References to any statutory provisions in the Contract shall be construed as references to those provisions as respectively amended or re-enacted either before or after the date of the Contract.

1.2. In the Contract, words importing the singular number only shall be deemed to include the plural number and vice versa unless the context otherwise requires and words importing the masculine gender shall be deemed to include the feminine gender and vice versa unless the context otherwise requires.

1.3. Reference to persons in the Contract shall include all entities with legal personality including natural persons, partnerships and companies save where the context otherwise requires.

2. PRE CONDITIONS

2.1. The Service Provider shall be registered with the Care Inspectorate, or an equivalent body if the placement is outwith Scotland.

2.2. The Supported Person has:-

a. chosen the Care Home to provide the Care; and

b. entered, or will have entered, into a Private Agreement with the Service Provider; and

c. either had a Care Needs Assessment carried out and been assessed by the Local Authority as requiring care, or is a person referred to in Regulation 2 of the Community Care (Assessment of Needs) (Scotland) Regulations 2002 to whom the Local Authority has decided to provide or to secure the provision of care without carrying out such a Care Needs Assessment.

3. DURATION OF CONTRACT

3.1. The Contract will commence on the last date of execution hereof or the date of the Supported Person's entry to the Care Home, whichever is the later, and will continue until terminated in accordance with any of the terms of the Contract.

4. SERVICES TO BE PROVIDED

4.1. The Service provider shall, in exchange for the Contract Price, provide Care to the Supported Person in accordance with the Health and Social Care Standards.

5. PAYMENT

5.1. The Local Authority will pay the Contract Price to the Service Provider for the services in accordance with the Local Authority's usual payment mechanisms. The Service Provider will provide receipted invoices to the Local Authority.

5.2. If payment of the Contract Price is not made within 28 days of the due date, the Local Authority shall, on written demand by the Service Provider, pay interest at 2% above the Royal Bank of Scotland Base Rate from time to time in respect of each day of overdue payment.

6. ASSESSMENT AND CARE MANAGEMENT

6.1. Care Needs Assessments will be arranged by the Local Authority.

6.2. The Supported Person will have a Care Manager allocated by the Local Authority.

7. MONITORING AND REVIEW OF SUPPORTED PERON'S CARE NEEDS

7.1. The Supported Person's care, including a report by the Service Provider on the review of the Supported Person's Personal Plan, will be reviewed at the end of any trial period, (initial review) and six months after the start of the Contract and annually thereafter.

7.2. The Supported Person, their representative, the Local Authority, and the Service Provider may request a review at any other time.

7.3. The Care Manager will be responsible for calling, arranging a venue for and minuting, the initial review and the six-month review.

7.4. Annual reviews will thereafter be the responsibility of the Service Provider. The Service Provider will advise the Care Manager of any review and will give the Care Manager the opportunity to comment as part of the review.

7.5. The Care provided in the Care Home will be in accordance with the Health and Social Care Standards as inspected and monitored by the Care Inspectorate. The Local Authority will utilise this information for the purposes of monitoring the provision of the Care by the Service Provider.

8. CONTRACT MONITORING

8.1. The Service Provider will comply with the Local Authority's systems for monitoring, evaluating and auditing the operation of the Contract upon being given reasonable notice by the Local Authority. The Local Authority will advise the Service Provider about the systems for monitoring, evaluating and auditing in use. The Local Authority reserves the right to visit the Care Home, and the Supported Person, at any reasonable time, without giving notice and without prejudice to the Supported Person's right to privacy.

9. COMPLAINTS

9.1. The Service Provider will provide a copy of the Complaints Procedure of the Care Home to the Local Authority and the Supported Person.

9.2. The Supported Person will be advised by the Local Authority that they have the right to complain directly to the Local Authority, or to the Care Inspectorate, if they are not happy with any aspect of the Care.

9.3. The Service Provider will ensure that the Supported Person and their Representative know how to make a complaint and are assisted with the completion of the documents (if required).

9.4. The Service Provider will notify all complaints relating to the Contract to the Local Authority routinely as part of the auditing of the Contract.

10. REGISTRATION

10.1. In the event of the Care Inspectorate serving notice of intent to take, or notice of decision to implement enforcement action against the Service Provider, the Local Authority may, but shall not be bound, to terminate the Contract without notice, irrespective of whether or not the time for any representation or appeal with respect to the enforcement action has expired, or that a representation or an appeal is pending.

11. CONFIDENTIALITY

11.1. Other than as permitted in terms of Clause 11.2 below, the Service Provider and its staff, shall regard as strictly confidential and shall not disclose to any unauthorised person, at any time during or after the duration, of the Contract, any information obtained in relation to the Local Authority or the Supported Person. The Service Provider shall not use any such information except as specifically required for the purposes of performing its obligations under the Contract.

11.2. Notwithstanding Clause 11.1 above, the Service Provider may, with the prior consent of the Supported Person, disclose personal and medical information relating to the Supported Person, to the relatives of the Supported Person or other suitably interested person in respect of the Supported Person. Such information must have also been made available to the Supported Person, subject always to any legislation, rule of law, or any pending civil or criminal investigation or inquiry and in particular to compliance with the General Data Protection Regulation (GDPR) as it applies in the UK and the Data Protection Act 2018.

11.3. The Service Provider shall at all times, ensure that its employees observe the principle of confidentiality in terms of Clauses 11.1 and 11.2 above. The Service Provider shall indemnify the Local Authority against any claims made by the Supported Person or any third party, as a result of either the Service Provider, or its employees, failing to maintain confidentiality in terms of this Contract.

11.4. The Service Provider shall not, unless permitted or requested to do so by the Supported Person, reveal information relating to any other contract which might exist between the Service Provider and the Supported Person.

11.5. The Service Provider shall not, unless permitted or requested to do so by the Supported Person, reveal any financial information about the Supported Person, even if the Service Provider is aware that the Supported Person's capital or income appears to be running low.

11.6. The obligations of confidentiality contained in this clause shall survive the termination of the Contract.

12. INSURANCE

12.1. The Service Provider shall be responsible for ensuring that appropriate and adequate insurance is maintained throughout the duration of the Contract.

13. STATUTORY OBLIGATIONS

13.1. Throughout the duration of the Contract, the Service Provider will observe and comply with all statutory enactments and regulations, and bye-laws of local or other authorities or other public bodies applicable to the Care Home and to the services including and without prejudice to the foregoing generality, the Adults

with Incapacity (Scotland) Act 2000, the GDPR and Data Protection Act 2018 and those applicable to Health and Safety at Work, Human Rights and Equality.

14. TEMPORARY ABSENCE FROM THE HOME

14.1. The Service Provider will provide the Care to the Supported Person over a twenty-four-hour period, 365 days a year, subject to any hospitalisation or other absence agreed between the Supported Person and the Service Provider.

14.2. The Service Provider will immediately inform the Representative and the Local Authority if the Supported Person is absent from the Care Home without notice.

14.3. In the event of the hospitalisation of the Supported Person, the Service Provider will, as soon as reasonably practicable (but in any event no later than the next working day) inform the Local Authority.

14.4. The Local Authority will continue to pay the Contract Price for a period of fourteen days from the commencement of the Supported Person's absence from the Care Home.

15. DEATH OF THE SUPPORTED PERSON

15.1. In the event of the death of the Supported Person, the Service Provider will, as soon as is reasonably practicable, but no later than the next working day, inform the Local Authority.

15.2. The Contract and the Local Authority's financial obligation will terminate three complete days after the date of death (the date of the Supported Person's death being day zero).

16. ASSIGNATION and SUB CONTRACTING

16.1. The Service Provider binds and obliges itself:

a. not to assign or sub-contract any part of the Contract without the prior written consent of the Local Authority, and
b. not to significantly change the facilities or amenities of the Care Home without giving the Local Authority and the Supported Person at least four weeks' written notice, and
c. to give at least four weeks' written notice to the Local Authority and the Supported Person prior to a sale of the Care Home being completed.

16.2. In the event of the Service Provider selling, or entering into an agreement to sell, the Care Home, the Local Authority may, upon being satisfied of the intended purchaser's suitability, and provided the intended purchaser applies for and is granted registration by the Care Inspectorate within 60 days of the sale, consent to an assignation of the Contract in favour of the purchaser.

17. USER AGREEMENTS

17.1. The Supported Person will not be required or requested by the Service Provider to sign any agreement in respect of their place in the Care Home, which conflicts with the provisions of the Contract. Where any such agreement, including the Private Agreement, does so conflict the terms of the Contract shall take precedence.

18. TERMINATION OF THE CONTRACT

18.1. Without prejudice to Clause 15.2, the Contract will subsist until termination in accordance with the provisions of this Clause 18.

18.2. The Service Provider may terminate the Contract, by giving 28 days written notice to the Supported Person and the Local Authority.

18.3. If the Service Provider has a receiver appointed, becomes insolvent, apparently insolvent, or is sequestrated or goes into liquidation (other than voluntary liquidation for the purposes of reconstruction or amalgamation) or is wound up by the Court or is voluntarily wound up by creditors or by members, the Local Authority shall be entitled to terminate the Contract with immediate effect.

18.4. The Local Authority may terminate the Contract immediately without notice and advise the Supported Person if the Service Provider commits a material breach of the terms and conditions of the Contract. One of the circumstances constituting a material breach will be the serving on the Service Provider by the Care Inspectorate of a decision notice stating that the Care Inspectorate has decided to implement a proposal to cancel registration.

18.5. The Service Provider may terminate the Supported Person's Care upon giving the Local Authority and the Supported Person 28 days' notice in writing if:

a. the care needs of the Supported Person are such that the Service Provider, the Local Authority and the Care Inspectorate agree that the Service Provider is unable to continue to provide appropriate care; or
b. the Local Authority has failed to pay the Contract Price to the Service Provider in accordance with the Contract.

18.6. The Local Authority may terminate the Contract upon 28 days' written notice if the Care being provided under the Contract is no longer appropriate to the Supported Person's care needs.

18.7. Notwithstanding any of the above the Local Authority may terminate the Contract upon 28 days' written notice. The Local Authority will advise the Service Provider in writing of its reasons for terminating, except where this would conflict with any duty of confidentiality between the Local Authority and any other person.

18.8. Notwithstanding any of the above, the Contract will terminate with effect from the date of termination of the Private Agreement. If the Service Provider receives notice of the Supported Person's intention to leave the Care Home or to terminate the Private Agreement, the Service Provider shall notify the Local Authority.

18.9. During any notice period stipulated in this Clause 18, the Service Provider and the Local Authority will co-operate to ensure that Care is provided to the Supported Person.

19. RESOLUTION OF DISPUTES

19.1. If any dispute arises between the Local Authority and the Service Provider in respect of the Contract, the Local Authority and the Service Provider shall use reasonable endeavours to reach an amicable and workable resolution of the matter in dispute within two weeks of the dispute arising.

19.2. If a dispute is not resolved between the Local Authority and the Service Provider in terms of Clause 19.1, then the dispute will be referred to the dispute resolution procedure set out in the Care Inspectorate's regulations and shall follow all the steps therein as appropriate. The Care will continue until the dispute is resolved.

20. NOTICES

20.1. Any notice in writing required to be given to either Party in terms of the Contract, whether delivered by hand or by first class post (in which case receipt shall be deemed to have occurred 48 hours after such posting) or other information, instructions or communication given to the Service Provider at the Care Home, shall be deemed to have been received by the Service Provider.

20.2. Any notice in writing whether delivered by hand or by first class post (in which case receipt shall be deemed to have occurred 48 hours after such posting) or other information, instruction or communication given to the Care Manager or any other person nominated from time to time by the Local Authority being the duly authorised representative for all purposes connected with the Contract, shall be deemed to have been received by the Local Authority.

21. PREVENTION OF CORRUPTION AND COLLUSION

21.1. The Local Authority will be entitled to terminate the Contract with immediate effect and to recover from the Service Provider the amount of any loss resulting from such cancellation, if the Service Provider has given or agreed to give, to any member, employee or representative of the Local Authority any gift or consideration of any kind as an inducement or reward for doing any act in relation to the obtaining or carrying out of the Contract or the Care of the Supported Person.

22. VARIATIONS

22.1. The terms of the Contract shall not be amended or varied in any way other than by a written Minute of Variation between duly authorised representatives of the Service Provider and the Local Authority and shall be intimated forthwith to the Supported Person.

23. LAW OF SCOTLAND

23.1. The construction, validity, performance and all other matters arising out of and in connection with the Contract shall be governed by the Law of Scotland.

24. EXERCISE OF POWERS

24.1. The Local Authority will exercise any of its powers, obligations or discretions in terms of the Contract, in a reasonable manner and in accordance with its statutory obligations.

25. ENTIRE AGREEMENT

25.1. The Contract shall constitute the entire contract between the Local Authority and the Service Provider in respect of the Care Home and the Supported Person's admission to the Care Home and supersedes all prior oral or written agreements, understandings or undertakings between the Local Authority and the Service Provider in respect of the Care Home and the Supported Person.

Annex B

SOCIAL SECURITY BENEFIT RATES

The Department for Work and Pensions publishes its benefits rates at**-**

Proposed benefit and pension rates 2025 to 2026 - GOV.UK (www.gov.uk))

These rates are proposed at time of publishing so should be checked at source prior to use.

Some benefits are delivered by Social Security Scotland; for the most up to date information please refer directly to the Social Security Scotland website.

Annex C

Tariff income from Capital

Capital held between these Amounts		
Nil	£22,000	£0
£22,000.01	£22,250	£1
£22,250.01	£22,500	£2
£22,500.01	£22,750	£3
£22,750.01	£23,000	£4
£23,000.01	£23,250	£5
£23,250.01	£23,500	£6
£23,500.01	£23,750	£7
£23,750.01	£24,000	£8
£24,000.01	£24,250	£9
£24,250.01	£24,500	£10
£24,500.01	£24,750	£11
£24,750.01	£25,000	£12
£25,000.01	£25,250	£13
£25,250.01	£25,500	£14
£25,500.01	£25,750	£15
£25,750.01	£26,000	£16
£26,000.01	£26,250	£17
£26,250.01	£26,500	£18
£26,500.01	£26,750	£19
£26,750.01	£27,000	£20
£27,000.01	£27,250	£21
£27,250.01	£27,500	£22
£27,500.01	£27,750	£23
£27,750.01	£28,000	£24
£28,000.01	£28,250	£25
£28,250.01	£28,500	£26
£28,500.01	£28,750	£27
£28,750.01	£29,000	£28
£29,000.01	£29,250	£29
£29,250.01	£29,500	£30
£29,500.01	£29,750	£31
£29,750.01	£30,000	£32
£30,000.01	£30,250	£33
£30,250.01	£30,500	£34
£30,500.01	£30,750	£35
£30,750.01	£31,000	£36
£31,000.01	£31,250	£37

Capital held between these Amounts		
£31,250.01	£31,500	£38
£31,500.01	£31,750	£39
£31,750.01	£32,000	£40
£32,000.01	£32,250	£41
£32,250.01	£32,500	£42
£32,500.01	£32,750	£43
£32,750.01	£33,000	£44
£33,000.01	£33,250	£45
£33,250.01	£33,500	£46
£33,500.01	£33,750	£47
£33,750.01	£34,000	£48
£34,000.01	£34,250	£49
£34,250.01	£34,500	£50
£34,500.01	£34,750	£51
£34,750.01	£35,000	£52
£35,000.01	£35,250	£53
£35,250.01	£35,500	£54
Above £35,500	Standard rate payment	

Annex D

Value of National Savings Certificates

Further information available at the National Savings & Investments website.

Issue Number	Unit Price	Year of Issue	01/07/98	01/07/99	01/07/00	01/07/01	01/08/02
1st	15s.6d.	1916-1922	4.61	4.66	4.71	4.76	4.82
2nd	16s.	1922-1923	4.54	4.59	4.64	4.69	4.74
3rd	16s.	1923-1932	3.58	3.90	3.95	4.00	4.05
Conversion	16s.	1932	3.58	3.90	3.95	4.00	4.06
4th	16s.	1932-1933	3.33	3.37	3.41	3.45	3.49
5th	16s.	1933-1935	3.21	3.25	3.29	3.34	3.38
6th	15s.	1935-1939	3.17	3.23	3.27	3.33	3.37
7th	15s.	1939-1947	5.54	5.72	5.72	6.04	6.15
£ issue	£1	1943-1947	5.54	5.72	5.72	6.04	6.15
8th	10s.	1947-1951	3.56	3.68	3.68	3.88	3.97
9th	15s.	1951-1956	4.63	4.79	4.79	5.05	5.17
10th	15s.	1956-1963	3.95	4.09	4.09	4.32	4.40
11th	£1	1963-1966	5.15	5.32	5.32	5.63	5.73
12th	£1	1966-1970	4.23	4.38	4.38	4.63	4.74
Decimal £1		1970-1974	3.93	4.06	4.16	4.28	4.36
14th	£1	1974-1976	3.65	3.77	3.88	3.99	4.06
14th	£1	1977-1979	3.08	3.18	3.26	3.36	3.45
Index-linked retirement issue	£10	1975-1980	30.15	30.54	31.48	32.12	32.49
16th	£5	1976-1977	19.08	19.68	20.18	20.78	21.17
18th	£10	1979-1980	29.13	30.10	30.84	31.77	32.40
19th	£10	1980-1981	28.55	29.49	30.22	31.14	31.75
Second index-linked issue	£10	1980-1985	20.61	20.88	21.52	21.96	22.22
21st	£10	1981	25.86	26.71	27.37	28.20	28.76
23rd	£25	1981-1982	67.47	69.62	71.40	73.54	74.91
24th	£25	1982	59.75	61.75	63.25	65.16	66.44
25th	£25	1982-1983	53.62	55.33	56.75	58.47	59.62
26th	£25	1983-1984	54.12	55.85	57.28	58.99	60.09
27th	£25	1984	50.48	52.12	53.45	55.07	56.15
28th	£25	1984	54.66	56.41	57.85	59.58	60.70
29th	£25	1984-1985	50.99	52.67	53.98	55.61	56.70
3rd index-linked issue	£25	1985-1986	50.38	51.43	53.22	54.41	55.94
30th	£25	1985	51.69	53.34	54.70	56.33	57.38
31st	£25	1986	46.50	48.03	49.22	50.71	51.71
4th index-linked issue	£25	1966-1990	39.95	40.79	42.20	43.16	44.15
32nd	£25	1986-1987	47.83	49.35	50.61	52.12	53.10
33rd re-investment	£25	1987-1988	41.36	42.75	43.79	45.12	46.23

34th re-investment	£25	1988-1990	39.80	41.07	42.12	43.38	44.19
35th re-investment		1990-1991	42.54	43.90	45.02	46.36	47.23
5th index-linked issue reinvestment	£25	1990-1992	36.14	36.72	37.81	38.47	39.16
36th							
36th re-investment	£25	1991-1992	38.91	40.19	41.19	42.44	43.28
37th	£25	1992	37.71	38.95	39.92	41.14	41.95
37th issue re-investment	£25	1992	37.71	38.95	39.92	41.14	41.95
38th	£25	1992	36.83	38.01	38.99	40.15	40.91
38th issue re-investment	£25	1992	36.52	37.75	38.67	39.85	40.83
39th	£100	1992	141.06	145.71	149.34	153.87	156.89
39th issue re-investment	£100	1992	141.06	145.71	149.34	153.87	156.89
40th issue re-investment	£25	1992-1993	31.85	33.54	34.39	35.41	36.08
6th index-linked issue	£25	1992-1993	31.85	34.01	35.02	35.64	36.28
6th index-linked re-investment issue	£25	1992-1993	32.52	34.01	35.02	35.64	36.28
41st issue re-investment	£25	1993-1994	29.78	31.95	33.17	34.16	34.80
7th index-linked issue	£25	1993-1994	30.52	32.67	34.12	34.72	35.34
42nd issue re-investment	£100	1994 - date	110.28	116.70	125.11	133.85	137.14
8th index-linked issue	£100	1994 - date	112.86	117.95	126.92	133.44	135.83
re-investment	£100	1994 – date	112.86	117.95	126.92	133.44	135.83
43rd issue re-investment	£100	1996 – date	104.83	109.41	115.20	122.77	130.78
9th index-linked issue	£100	1996 – date	106.65	109.88	115.64	121.81	129.31
re-investment	£100	1997 – date	106.65	109.88	115.64	121.81	129.31
44th issue re-investment	£100	1997 – date	100.94	104.83	109.41	115.20	125.10
10th index-linked issue	£100	1997 – date	100.00	107.51	112.79	118.07	126.78
re-investment	£100	1997 – date	104.55	107.51	112.79	118.07	126.78

11th index-linked issue	£100	1997 – date	100.00	105.13	109.96	114.61	122.44
re-investment	£100	1998 – date	102.32	105.13	109.96	114.61	122.44
45th issue	£100	1998 – date	100.00	104.61	108.91	114.31	121.25
re-investment	£100	1998 – date	100.90	104.61	108.91	114.31	121.25
12th index-linked issue	£100	1998 – date	100.00	104.91	109.55	113.94	120.59
re-investment	£100	1998 – date	102.19	104.91	109.55	113.94	120.59
46th issue	£100	1998 – date	100.00	100.00	105.57	109.90	116.65
re-investment	£100	1998 – date	100.90	101.80	105.57	109.90	116.65
13th index-linked issue	£100	1998 – date	100.00	100.00	105.75	109.17	113.85
re-investment	£100	1998 – date	102.19	101.58	105.75	109.17	113.85
47th issue	£100	1998 – date			105.54	109.63	114.13
re-investment	£100	1998 – date			105.54	109.63	114.13
14th index-linked issue	£100	1998 – date			105.07	108.36	112.58
48th issue	£100	1998 – date			104.05	107.51	111.22
re-investment	£100	1998 – date			104.05	107.51	111.22
15th index-linked issue	£100	1998 – date			105.04	106.44	109.89
49th issue	£100	1998 – date			103.80	107.04	110.50
re-investment	£100	1999 – date			103.80	107.04	110.50
50th issue	£100	1999 – date			104.05	106.61	110.23
re-investment	£100	1999 – date			104.05	106.61	110.23
51st issue	£100	1999 – date			103.30	105.93	110.55
re-investment	£100	1999 – date			103.30	105.93	110.55
52nd issue	£100	1999 – date			100.00	105.36	110.20
re-investment	£100	1999 – date			102.63	104.36	110.20
53rd issues	£100	1999 – date			100.00	104.94	110.33
re-investment	£100	1999 – 2000			101.95	104.94	110.33
16th index-linked issue	£100	2000 – date			100.00	105.16	108.74
re-investment	£100	2000 – date			103.58	105.16	108.74
54th issue	£100	2000 – date			100.00	104.10	108.47
re-investment	£100	2000 – date			101.03	104.10	108.47
17th index-linked issue	£100	2000 – date			100.00	100.00	105.05
re-investment	£100	2000 – date			100.00	101.57	105.05
55th issue	£100	2000 – date			100.00	100.00	105.70
re-investment	£100	2000 – date			100.00	101.85	105.70
18th index-linked issue	£100	2000 – 2001				100.00	104.47
re-investment	£100	2000 – 2001				101.12	104.47
56th index	£100	2000 – 2001				100.00	128.22
re-investment	£100	2000 – 2001				100.88	128.22
19th index-linked issue	£100	2000 – 2001				100.00	103.54
re-investment	£100	2000 – 2001				100.61	103.54
57th issue	£100	2000 – 2001				100.00	103.25
re-investment	£100	2000 – 2001				100.00	103.25
20th index-linked issue	£100	2001 – date				100.00	100.00
re-investment	£100	2001 – date				100.63	102.20
58th issue	£100	2001 – date				100.00	103.40

re-investment	£100	2001 – date	100.00	103.40
59th issue	£100	2001- date		100.00
re- investment	£100	2001- date		102.63
60th issue	£100	2001- date		100.00
re-investment	£100	2001- date		102.51
61st issue	£100	2001- date		100.00
re-investment	£100	2001- date		101.60
62nd issue	£100	2002- date		100.00
re-investment	£100	2002- date		101.45
63rd issue	£100	Current		100.00
re- investment	£100	Current		101.55
21st index-linked issue	£100	2001- date		100.00
Re- investment	£100	2001- date		101.65
22nd index-linked issue	£100	2002-date		100.00
re-investment	£100	2002-date		102.00
23rd index-linked issue	£100	Current		100.00
re-investment	£100	Current		102.10

Take the purchase price as the capital value if:

- the value of the last preceding 1 July is shown as "-"; or
- the certificates are from a new issue not yet shown on this table.

A 17th issue was announced but not introduced and a 22nd issue was not introduced. This table was issued at August 2002.

Annex E

PAYMENT OF ATTENDANCE ALLOWANCE (AA) / DISABILITY LIVING ALLOWANCE CARE COMPONENT (DLA) (CC) PERSONAL INDEPENDENCE PAYMENT (PIP) / ADULT DISABILITY PAYMENT

AA / DLA (CC) / PIP / ADP may be paid to residents on the following basis:

TYPE OF RESIDENT	EFFECT ON AA/DLA (Care Component)/PIP
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) / PIP / ADP before admission to residential accommodation).
Anyone of any age 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) / PIP / ADP 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, Universal Credit, 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 / DLA (care) / PIP / ADP 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.
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.	Continues to be payable for as long as they meet the conditions of entitlement regardless of whether they are also receiving means tested benefits.

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 / PIP / ADP).

Note:

Residents who are not receiving local authority funding, other than for FNC, who have not previously claimed AA / DLA / PIP / ADP 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 / PIP / ADP.

The withdrawal of AA / DLA / PIP / ADP 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.

***Residents who are funded by local authorities and have AA / DLA / PIP / ADP withdrawn, keep underlying entitlement to it. Local authorities should advise residents that if they have any periods away from the home e.g. to stay with relatives, they may be able to claim for those periods*.**

Annex F

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

Income Support/Pension Credit and Retirement Pension: Effect of Admission to Hospital from 21 May 2003[7]

Type of Accommodation	**Period in Hospital**	**Income Support/ Pension Credit**	**Retirement Pension**
All residents in local authority and independent sector residential care homes	Immediately on admission	No change to benefit immediately on admission	No change to benefit immediately on admission
	After 52 weeks[8] **Please note**: The 28 day linking rules was also abolished from 10 April 2006.	Since 10 April 2006 ("A" day) benefit is no longer reduced to the hospital personal allowance.	Since 10 April 2006 benefit is no longer reduced to a personal requirements rate.

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

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

[7] The changes were introduced with effect from 10 April 2006. This means that residents whose benefits were downrated after 52 weeks under the previous rules had their benefit reinstated from the payday on or after 10 April 2006.

[8] This is the position for the majority of residents. However, there are different provisions for residents who have dependants and where all or part of the remaining benefit cannot be used by, or on behalf, of the resident. For full details please see the Department for Work and Pensions guidance contained in Chapter 24 of the Decision-Makers Guide.

Annex G

LEGISLATION FOR PAYMENT OF WAR WIDOWS AND WAR WIDOWER'S 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 Their Majesty of 14 January 1922.

Annex H

THE TREATMENT OF COUPLES IN CLAIMS FOR INCOME SUPPORT/UNIVERSAL CREDIT/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/Universal Credit/Pension Credit. The treatment of a couple for Income Support/Universal Credit/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/Universal Credit/Pension Credit purposes, and the whole amount of Income Support/Universal Credit/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/Universal Credit/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/Universal Credit/Pension Credit will be paid as if he were a single person. No account will be taken, in the Income Support/Universal Credit/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, Jobcentre Plus / the Pension Service Decision Maker decides whether to assess them as a couple or separately.

A couple who lives in the same household are treated as a single unit for Income Support/Universal Credit/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/Universal Credit/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 Jobcentre Plus / the Pension Service Decision Maker decides to aggregate the couple's resources Income Support/Universal Credit/Pension Credit will be paid to one member of the couple taking into account, the needs of both members.

ANNEX I

PENSION CREDIT

(For information only)

Pension Credit is an income-related benefit for people who have reached the qualifying age and who live in Great Britain. It tops up their income to a guaranteed level of **£227.10** per week for a single person (**£346.60** for a couple). These amounts may be more for people who have caring responsibilities, are severely disabled or have certain housing costs.

The Pension Credit qualifying age is gradually going up to 67 for men and women. To find out the date when a person will reach the Pension Credit qualifying age go to the State Pension age calculator at https://www.gov.uk/calculate-state-pension

People aged 67 or over and who reached state pension age before 7 April 2025 can also be awarded an extra amount in respect of some of the savings and income they have secured for their retirement. This is the Savings Credit. It gives pensioners a cash addition of 60p for every £1 of income they have above the savings credit threshold (**£198.27** for a single person and **£314.34** for a couple) up to a maximum of **£17.30** week (**£19.36** a week for couples).

After this, the maximum Savings Credit is reduced by 40p for every £1 of income above the income guarantee so that pensioners with incomes up to **£270.35** a week (**£395.01**) 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 UK Government made changes to the Savings Credit part of Pension Credit from 6 April 2016. The Savings Credit part of Pension Credit is closed for people reaching State Pension age on or after 6 April 2016.

People reaching State Pension age before 6 April 2016 can still get Savings Credit, depending on their circumstances, regardless of when they apply.

Where one person in a couple reaches State Pension age before 6 April 2016 and the other on or after 6 April 2016 Savings Credit will be awarded if one person:

- was already getting it immediately before 6 April 2016 and
- has been entitled to it at all times since 6 April 2016.

The values given in this Annex reflect the increase in Pension Credit from 7 April 2025.

For further details about Pension Credit, contact the Pensions Service on 0800 731 0469.

For further details on the savings disregard please refer to paragraph 08033 above and to community care circular CCD7/2003**.**

ANNEX J

THE QUALIFYING AGE FOR THE £20 DISREGARD

The qualifying age for the £20 disregard is pensionable age. State Pension age is worked out based by gender and date of birth and is currently under review and may change in the future.

Details of relating to this, as well as the state pensionable age calculator can be found here.