

CHARGING for RESIDENTIAL ACCOMMODATION GUIDE (CRAG)

in support of
The National Assistance (Assessment of Resources) Regulations
1992 (S.I. 1992/2977)

UPDATE

*CRAG has been updated to take account of changes introduced by virtue of **SI. 2011 No. 724** Changes to CRAG are shown by the use of shading.*

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SECTION 1 – INTRODUCTION

About this guidance

Revisions to the Guidance

- 1.001 This guidance has been revised at least annually since it was introduced in 1993. For this revision the opportunity has been taken to re-number and re-order paragraphs where necessary and, therefore, there will not be an exact correlation with paragraph number in previous issues.

Status of the guidance

- 1.002 This guidance is issued under Section 7(1) of the Local Authority Social Services Act 1970 which requires local authorities to exercise Social Services functions under guidance of Secretary of State.

Acts of Parliament and Regulations

- 1.003 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. *Reg.* Refers to a regulation of the National Assistance (Assessment of Resources) Regulations 1992 (SI 2977) *Schedule* refers to a schedule to the National Assistance (Assessment of Resources) Regulations 1992.

Gender

- 1.004 In all paragraphs, the words “he” or “his” should be taken as also referring to “she” or “hers”. The male form has been used purely for ease of writing and reading.

Transitional Provisions

- 1.005 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. Local authorities should keep archive copies of Transitional Provisions guidance to refer to should any resident query his past assessments.

Statutory basis

- 1.006 Where a person is provided with accommodation under Part 3 of the National Assistance Act 1948, section 22 of that Act provides for him to be charged for the accommodation. **Section 22(1)**
- 1.007 Section 22 requires the local authority to fix a standard rate for the accommodation. If a resident (i.e. a person who is provided, or proposed to be provided, with accommodation under Part 3) is unable to pay the standard rate, the local authority must assess their ability to pay, and decide what lower amount should be charged. **Section 22(3)**
- 1.008 There should be no charge made for aftercare services, which can include residential care, provided under Section 117 of the Mental Health Act 1983.

Standard rate

- 1.009 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)**
- 1.010 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

- 1.011 Where a local authority is considering whether to make arrangements for residential accommodation, and is determining whether care and attention are otherwise available to a person section 21(2A) requires the authority to disregard the person's capital up to the capital limit (see paragraph 6.006). Where a local authority need to calculate a person's capital for the purposes of section 21(2A), the capital shall be calculated in the same way as if he were a person for whom accommodation is proposed to be provided. **Section 21(2A) and (2B)**

Assessing ability to pay and how much to charge

Regulations

- 1.012 Where a resident (i.e. a person who is provided, or proposed to be provided, with accommodation under Part 3) is unable to pay either the standard rate or the actual cost incurred by the local authority, the local authority must assess his ability to pay using regulations made for that purpose. These are *The National Assistance (Assessment of Resources) Regulations 1992*. (S.I. 1992/2977). **Section 22(5)**

Local authority managed homes

- 1.013 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 his ability to pay and, based on that assessment, decide the lower amount which should be paid. **Section 22(3)**

Independent homes

- 1.014 A contract made with an independent home must include arrangements for the local authority to pay the home for the accommodation, as well as specifying the amount to be paid. The local authority must then ask the resident to refund that amount to the authority. Where the resident satisfies the local authority that he is unable to make a full refund, the local authority must assess their ability to pay in the same way as a person in a local authority managed home, and decide the lower amount to be refunded. (See 1.030 and 1.031 for collection of charges). **Sections 26(2) and 26(3)**

Nursing mothers

- 1.015 Section 21(1)(aa) of the National Assistance Act 1948 allows for the provision of residential accommodation for nursing mothers. Because of this, a LA should charge for the accommodation under the rules contained in this guidance. In these circumstances it may be necessary for local authorities to vary the amount of personal expenses allowance to reflect the needs of the infant (see 5.008).

Residents with a dependent child

- 1.016 Where a person placed in residential accommodation has a dependent child, the LA will need to consider using the powers in Section 22(4) of the National Assistance Act 1948 to vary the amount of personal expenses allowance needed by the resident to reflect the needs of the dependent child (see 5.008).

Reduction for assistance in running a local authority managed home

- 1.017 Section 23 of the Act allows local authorities to make rules governing the running of residential accommodation managed by them. These rules may provide for part of the charge for accommodation to be waived where a resident helps in running the home. The payment the resident is liable to make must be determined in accordance with section 22, and the local authority may then waive part of that charge in accordance with the rules made. **Section 23(3)**
- 1.018 The provisions in paragraph 1.017 do not apply to people in homes which are not managed by the local authority.

Information to be given to the resident

- 1.019 The LA must ensure that the resident is given a clear explanation, usually in writing, of how the assessment of his ability to pay has been carried out. This should explain the usual weekly assessed charge. They should also inform the resident of the reasons why the charge may fluctuate, particularly where a new resident's charge may vary in the first few weeks of admission because, for instance, of the effect of benefit paydays on Income Support/Pension Credit or the withdrawal of Attendance Allowance or Disability Living Allowance (Care component). The resident should, however, be informed of why the charge may fluctuate. There is also no requirement to specify the assessed charge in the contract with the home.

Residents and Enduring Power of Attorney, Lasting Power of Attorney or Property and Affairs Deputyship etc

- 1.020 In all cases, the LA should find out if a resident has any of the following:
- Enduring Power of Attorney (EPA);
 - Lasting Power of Attorney (LPA) for Property and Affairs;
 - Property and Affairs Deputyship under the Court of Protection; or
 - any other dealings with the resident's affairs (e.g. someone who has been given appointee-ship by the Department for Work and Pensions (DWP) for the purpose of Benefit payments).
- 1.021 Social work staff should establish at the time of the assessment of care needs whether a resident has the capacity to consent to the care plan and any following financial assessment. If a resident appears to lack the capacity to consent to their financial information being given to the LA, while all practicable steps have been taken to help the resident, the LA should make enquiries as to whether there is a registered EPA, or registered LPA for Property and Affairs, or a Property and Affairs Deputy to manage the person's financial affairs, or an Appointee by the Secretary of State for Work and Pensions to manage the person's benefits.
- An EPA can be used without being registered whilst the resident has capacity, provided the resident consents. If the resident loses capacity an EPA cannot be used without being registered, though it can still be used for essentials whilst in the process of being registered (e.g. it can be used for the payment of regular bills, but not major matters, such as selling a house). An attorney can only apply to register an EPA when they believe the resident is losing capacity. LPA replaced EPA on 1 October 2007. A person given power under an EPA before 1 October 2007 can still use it and apply to have it registered.
 - A Property and Affairs LPA can only be used when it has been registered. However, a LPA can be registered whilst the person has capacity.
 - With regard to a person Appointed by the Secretary of State for Work and Pensions to manage the person's benefits, unless such a person falls within one of the other categories (e.g. EPA or LPA) the appointee has no power to make decisions on behalf of someone who lacks capacity except in relation to benefits as provided under DWP regulations.

While residents have capacity, they may wish to choose whether to give the information themselves or to pass this their Attorney.

- 1.022 If there is no one acting in this capacity, and if, following an assessment of capacity to make financial decisions, it is considered that the person does not have the capacity to manage some or all of their finances, the LA should satisfy itself under its duty of care that there are arrangements put in place which meet the requirements of the Mental Capacity Act 2005. Provision of services should not be delayed whilst applications are made to register an EPA/ Property and Affairs LPA or to appoint a Property and Affairs Deputy or an Appointee.

Treatment of fractions in the assessment

- 1.023 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. **Regulation 4**

Social Security benefits

Local authority managed homes

- 1.024 With effect from 6 October 2003, the Part 3 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.
- 1.025 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

- 1.026 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.
- 1.027 People in unregistered independent residential accommodation are entitled to Income Support/Pension Credit at the same rate as if they were living in their own homes and may claim Housing Benefit plus Supporting People payment where appropriate.

Attendance Allowance / Disability Living Allowance (Care component)

- 1.028 See Annex E for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care component).

Admission to Hospital

- 1.029 When a resident is admitted to hospital, in some circumstances his Social Security benefits might be reduced after a period. See Annex F for details.

Collecting charges from residents in independent homes

Resident to pay the charges direct to the home

- 1.030 Normally, residents will pay their assessed charge direct to the local authority. However, Section 26(3A) of the National Assistance Act 1948 provides for an exception to this rule for residents placed by local authorities in independent sector homes: where the resident, the local authority, and the organisation or person managing the premises **all** agree, the resident may pay direct to the home the amount that he or she would otherwise pay to the local authority. This will leave the local authority responsible for paying the home the remainder of the cost. N.B. Whenever possible residents should be offered a choice as to whether they wish to pay their contribution directly to the care home or if they would prefer the LA to pay gross and pay their contribution to the local authority.

Liability for payment to the home

- 1.031 This exception to the normal rule is an administrative easement which will be particularly useful where the resident and home provider wish to maintain a form of landlord - tenant relationship, for example, where the premises are provided by a housing association. **However**, authorities should note that they remain responsible for the full amount should the resident fail to pay the home as agreed. In such a case, **the authority** will recover the charge from the resident in the normal way. It is not good practice to expect the care home to recover any debt owed to the local authority. **Section 26(3A)(a)**

Charges for Day Care Services

- 1.032 Residents 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 LA for that package. Where a separate package of services has been arranged by the LA for a resident then the LA can consider whether to charge the resident extra for these services (using the discretionary charging powers for non-residential services). As the resident may only have their PEA and any disregarded income available, the amount charged (if any) is likely to be minimal.

Preserved rights

- 1.033 Following the full implementation of the community care reforms in April 1993, individuals who were in receipt of special levels of Income Support/Minimum Income Guarantee to fund their stays in residential accommodation had their entitlement to this support preserved. Under section 26A of the National Assistance Act 1948, local authorities had the power to make residential accommodation arrangements for specified categories of these preserved rights cases. Where such arrangements were in place, the charging rules set out in CRAG applied. From 8 April 2002, all entitlement to preserved rights ended and section 26A ceased to have effect. Any arrangements made under section 26A have now ended, and the Assessment of Resources Regulations and this guidance apply in the usual way to all persons formerly entitled to preserved rights.

Liaison with Department for Work and Pension / Jobcentres/the Pension Service

- 1.034 It is important that LAs maintain good liaison arrangements with Jobcentres/the Pension Services as in some aspects of the assessment the LA, if they have not been able to obtain necessary information from the resident or another source with due account of the common law duty of confidentiality, may need to contact Jobcentres/the Pension Service. (See LASSL(93)8). 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 councils 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 is available on the Department of Health website at:

www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/FinanceAndPlanning/ResidentialCare/fs/en.

Please note: councils should not approach DWP or the offices of Jobcentre Plus or the Pension Service if they can obtain accurate breakdowns of entitlement from residents.

Complaints

- 1.035 Complaints about the level of charge levied by a LA are subject to the usual social services complaints procedure, which from April 2009, as set out in The Local Authority Social Services and NHS Complaints Regulations 2009, The regulations include transitional provisions for complaints made prior to April 2009 under the Local Authority Social Services Complaints (England) Regulations 2006.
- 1.036 Where LA's have established special Panels or Fast track review processes to deal with financial assessment/charging issues, the resident should be reminded that they still have access to the statutory Complaints Procedure.

Permanent and Temporary Stays

- 1.037 Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such councils' 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

- 2.001 Before April 1993, local authorities had powers to arrange for the provision of residential accommodation under:
- a) the National Assistance Act 1948; and
 - b) the National Health Service Act 1977.
- 2.002 The powers to provide accommodation under the National Health Service Act 1977 were repealed from 1st April 1993 by the National Health Service and Community Care Act 1990.

National Health Service Act 1977 (NHS Act 1977)

- 2.003 The NHS Act 1977 was used to provide accommodation mainly for people who were able to live more independently than those accommodated under the National Assistance Act, but who, nevertheless, required some degree of care and support. These were mostly (but not always) people under pension age.
- 2.004 Local authorities were not required to charge for accommodation arranged under the NHS Act 1977. They were empowered to make a reasonable charge where appropriate, but were not required to assess the resident's ability to pay. This meant that the money left with residents for their personal use was not limited to the prescribed amount for personal expenses allowed for people accommodated under the National Assistance Act.
- 2.005 This provision existed because less dependent residents are encouraged to live as independently as possible, perhaps with a view to eventually living independently in the community. They need extra money for, e.g. the cost of food or household expenses, or travel to work.

Effect of repeal of powers under the NHS Act 1977

- 2.006 Subject to the exemption outlined in 1.008, **all** adult residential accommodation placements made by LAs, including those for people who are less dependent, will be made under the National Assistance Act 1948. Under this Act, a charge **must** be made for the accommodation. If a resident cannot pay the full charge, the local authority is required to assess his ability to pay in accordance with *The National Assistance (Assessment of Resources) Regulations 1992*.
- 2.007 It is recognised that the normal charging rules would not be appropriate for "less dependent" residents because they will usually need to be left with more than the standard personal expenses allowance if they are to live as independently as possible. There is special provision in the regulations, therefore, to enable local authorities to continue to treat "less dependent" residents differently where they consider it reasonable in the circumstances to do so.

Regulation 5

Identifying "less dependent" residents

- 2.008 For the purposes of the charging rules a "less dependent" resident is a person who is in, or for whom accommodation is proposed to be provided in, premises which are not an establishment which is carried on or managed by a person who is registered under Part 2 of the Care Standards Act 2000.

Regulation 2(1)

Assessing "less dependent" residents

- 2.009 It is up to the local authority how much it decides is reasonable 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 is he incurring costs directly for necessities such as food, fuel and clothing

- the degree of the resident's independence, i.e. to what extent should he be encouraged to take on expenditure commitments
- whether he needs a greater incentive to become more independent, e.g. he may be encouraged to take on paid employment if most or all of his earnings and any Working Tax Credit received are disregarded. **Regulation 5**

2.010 Were a resident is in accommodation for whom accommodation is proposed to be provided in premises which are not an establishment which is carried on or managed by a person who is registered under Part 2 of the Care Standards Act 2000, the capital limits for Income Support will be £10,000 and £16,000, for Pension Credit will be a lower limit of £10,000 only and for Housing Benefit will be £10,000 and £16,000. **Regulation 2(1)**

SECTION 3 - TEMPORARY RESIDENTS

Who is a temporary resident?

- 3.001 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. **Regulation 2(1)**
- 3.002 An admission is temporary either if the agreed intention is for it to last for a limited time period, such as respite or intermediate care, or there is uncertainty that permanent admission is required. For a fuller explanation of how to deal with residents receiving intermediate care see 3.023 below.
- 3.003 An admission is permanent if the agreed intention is for the resident to remain in residential accommodation.
- 3.004 Decisions on the temporary or permanent status of a resident must have been agreed with the resident and/or their representative and included in the written care plan.
- 3.005 A stay, which was initially expected to be permanent may, in fact become temporary (e.g. an unexpected improvement allowing discharge). In such cases the resident should be treated as temporary from the date of admission. It would be unreasonable to apply to the resident rules which would affect him as a permanent resident (e.g. treatment of the resident's former home, in particular placing a charge placed on the resident's interest in the property).
- 3.006 Similarly a stay, which was initially expected to be temporary, may become permanent but in such cases the financial assessment as a permanent resident should only be from the date that an amendment to the care plan has been agreed with the resident and/or their representative.
- 3.007 Where a temporary resident has a partner their resources cannot be jointly assessed (see Section 4).
- 3.008 The status of a resident may affect the amount of Income Support/Pension Credit payable:
- a) a temporary resident may receive Income Support/Pension Credit which includes an amount in respect of housing costs or any Housing Benefit and/or Council Tax Benefit entitlement may continue to be paid in respect of their home in the community.
 - b) a trial period resident may only receive Income Support/Pension Credit housing costs or Housing Benefit and/or Council Tax Benefit for 13 weeks (see LAC (95) 7 paragraphs 7 to 11)

Charging for the first 8 weeks

Up to 8 weeks

- 3.009 An assessment of ability to pay is not required for the first eight weeks of a stay. It is for the local authority to decide whether it will carry out a financial assessment or whether it will charge an amount that it appears reasonable for the resident to pay. If it is decided to carry out a financial assessment, the calculation should be in accordance with Sections 4 to 12. **Section 22(5A)**

After 8 weeks

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

Income Support/Pension Credit for temporary residents

- 3.011 Where a resident enters residential accommodation for a temporary period the amount of any Income Support or Pension Credit in payment will usually remain the same because they will be treated as normally residing in their own home. However, if the severe disability premium

and the enhanced disability premium (if appropriate) are included in the Income Support calculation or the severe disability additional amount is included in the Pension Credit calculation, they will no longer be included where Disability Living Allowance care component/Attendance Allowance has ceased. There are special rules for Income Support and income related Employment Support Allowance where one member of a couple enters residential accommodation for a temporary period (see Annex H).

- 3.012 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

- 3.013 If the LA decide to make an assessment straight away, or from the eighth week, his ability to pay should be assessed in accordance with the following paragraphs.

Capital

- 3.014 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 him; **or**
 - b.) he is taking reasonable steps to dispose of the property in order to acquire another more suitable home to which he will return. **Schedule 4 paragraph 1**

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

Income

- 3.015 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**
- 3.016 If Housing Benefit is in payment in respect of the home address, disregard the amount of HB in full. **Schedule 3 paragraph 3**
- 3.017 From 1st April 2003, under "Supporting People" arrangements, LAs have powers to take payments for housing support charges in respect of a resident's home address. Such payments are made to assist independent living and may be made by the LA to residents or to housing or support providers on a resident's behalf. If liability to meet charges continues whilst a resident is in a care home, payments from the LA to meet the charges can be disregarded in the assessment of a resident's income or capital. Payments that should be disregarded are those which are made to meet charges that are of a kind that would have qualified for Housing Benefit or Income Support/Minimum Income Guarantee prior to 1 April 2003 and may include payments to meet charges for:
- a warden in sheltered housing;
 - emergency alarms;
 - cleaning of rooms and windows if the resident or someone in his household is unable to clean them himself;
 - general support and counselling to assist a resident to comply with terms of the tenancy agreement, for example, maintaining the safety and security of their dwelling, or keeping the interior of the dwelling in an appropriate condition.

Additionally, where a resident is paying part or all of the cost of a housing support service himself under the Local Authorities (Charges for Specified Welfare Services) (England)

Regulations 2003, this amount should be disregarded from the assessment of income and capital. **Schedule 3 paragraphs 28D and 28E, Schedule 4 paragraphs 22 and 23**

3.018 Income Support/Pension Credit Housing Benefit and Supporting People 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
- service charges not met by Income Support/Pension Credit/Housing Benefit
- insurance premiums
- housing support charges not met by the LA **Schedule 3 paragraph 27**

3.019 Where neither Income Support/Pension Credit, Housing Benefit or Supporting People payments 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:

- 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
- payments under:
 - co-ownership scheme
 - tenancy agreement or licence of a Crown tenant **Schedule 3 paragraph 27**

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 he will return. **Schedule 3 paragraph 27**

3.020 Any cash payment made to a temporary resident in lieu of concessionary coal is fully disregarded. **Schedule 3 paragraph 28**

Couples

3.021 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

- 3.022 Where the resident is a temporary resident, AA or DLA Care Component should be completely ignored - but remember that either benefit will be withdrawn after four weeks if the resident is relying on public support. These rules also cover Constant Attendance Allowance and Exceptionally Severe Disability Allowance payable with Industrial Injuries Disablement Benefit or War Disablement Pension. **Schedule 3 paragraph 6**

Intermediate Care Services

- 3.023 Any services which form part of a package of intermediate care as defined in the regulations issued under the Community Care (Delayed Discharges etc) Act (Qualifying Services)(England) Regulations 2003 must be provided free of charge for 6 weeks. Paragraph 7 of HSC2001/01: LAC(2001)1 issued in January 2001 provides a working definition of intermediate care services. (Also see LAC(2003)14.) In exceptional circumstances where intermediate care is provided for longer than 6 weeks, the first 6 weeks of that care must be provided free of charge. The position on charging after the 6 week period remains as set out in paragraph 18 of the above guidance.

SECTION 4 - COUPLES

LA treatment of couples

- 4.001 Under the National Assistance Act 1948, the LA has no power to assess a couple, or civil partners, according to their joint resources. Each person entering residential care should be assessed according to their individual means
- 4.002 The LA should attempt to identify cases where a resident is the main recipient of the couple's income, and the assessment of the resident's financial contribution could result in a substantial reduction in the income remaining for the spouse, or civil partner, at home. In such cases, the LA should consider increasing the resident's personal expenses allowance, as described in Section 5 of this guide, 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. However, but it would be reasonable for the LA 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 authority themselves to determine.

Capital limits for couples, including civil partners

- 4.003 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 **£23,250** capital in his own right, or his share of jointly owned capital must be in excess of **£23,250** before he is excluded from support on the grounds of capital.

Temporary residents

- 4.004 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 of this guide. In every case, the LA must assess each resident separately. Disregard any Income Support/Pension Credit awarded in respect of home commitments. Income Support/Pension 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/Pension Credit/Housing Benefit
 - insurance premiums
- 4.005 It will be important for councils to consider most carefully the needs of 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 do.
- 4.006 It will be useful to know how Income Support/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/Pension Credit is being paid for a couple, or civil partners, it would be reasonable to expect the partner receiving the Income Support/Pension Credit to contribute towards the charge for accommodation for the other partner a sum equivalent to the Income Support/Pension Credit payable for that partner. If Income Support/Pension Credit is paid to the partner in residential accommodation, the full amount will have to be taken into account but the LA should consider varying the personal expenses allowance, as described in Section 5, in order to leave enough for the partner 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.

4.007 Local authorities should ensure that the partner remaining at home receives, as a minimum, the basic level of income support/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

4.008 Where one, or both, members of a couple, or civil partnership, are admitted permanently to residential accommodation the LA 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 as Annex H

SECTION 5 - PERSONAL EXPENSES ALLOWANCE

Amount of personal expenses allowance

- 5.001 In assessing a resident's ability to pay for his accommodation, the LA is required to ensure that he retains an amount for personal expenses. **Section 22(4)**
- 5.002 The amount allowed in the assessment for personal expenses is laid down each year in the National Assistance (Sums For Personal Requirements and Assessment of Resources) Regulations and is the same for each resident whether they are in a LA run home or an independent sector home. From April 2011 it is £22.60.
- 5.003 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 a welfare benefits or independent advocacy service to resolve the problem.

Purpose of the personal expenses allowance

- 5.004 The personal expenses allowance is intended to enable residents to have money to spend as they wish.
- 5.005 Councils are reminded that the PEA should not be spent on aspects of board, lodgings and care that have been contracted for by the council and/or assessed as necessary to meet individuals' needs by the council and the NHS. In this regard, councils should ensure that an individual resident's need for continence supplies is fully reflected in their care plan. Neither councils nor providers of residential care have the authority to require residents to spend their PEA in particular ways, and pressure of any kind to the contrary is extremely poor practice.
- 5.006 Councils are reminded that, based on a financial assessment of an individual's resources, individuals must be left with the full value of their 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 council and/or have been assessed as necessary by the council or NHS. Nor does it preclude arrangements agreed between the resident and the care home, particularly where the care home manager is acting as agent or appointee 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. Councils are also reminded that under Section 22(4) of the National Assistance Act they have the power to increase the PEA in special circumstances. 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 well-being.
- 5.007 An individual's need for chiropody should also be fully reflected in the care plan. See Circulars LAC(2002)11 and LAC (2003)8 for more details.

Varying the amount of personal expenses allowance

- 5.008 Under Section 22(4) of the National Assistance Act of 1948 local authorities have the power to allow a different amount from that prescribed for personal expenses in special circumstances. Examples of where a LA might consider allowing a different amount are:
- someone who does not qualify as a "less dependent" resident solely because he lives 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 his income in order to help him lead a more independent life, for example if he is working.
 - where a person in residential accommodation has a dependent child, the LA 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 of this guidance) in the charging assessment (e.g. Income Support/Pension Credit, and Child Benefit and Child Support Maintenance Payments where the child is accommodated with the resident under Part 3 of the National Assistance Act 1948).

- where a person temporarily in residential accommodation receives Income Support/Pension Credit including an amount for a partner who remains at home (see 4.008) the LA should consider the needs of the person at home in setting the personal expenses allowance.
- local authorities are required to ignore half of a resident's occupational pension, personal pension or retirement annuity contract where the resident is paying half of that pension to a spouse, or civil partner, (see 8.026). This disregard does not cover unmarried couples. Where the person in residential accommodation is the main recipient of an **unmarried** couples' overall income (e.g. occupational pension), the LA can use their discretion to increase the resident's personal expenses allowance in special circumstances 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/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 and no worse 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 LA should consider increasing the person's PEA to meet any resultant costs. Local authorities should make specific efforts to address this issue in the assessment and could usefully include appropriate questions in their financial assessment forms.

SECTION 6 - CAPITAL

What is capital?

6.001 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

6.002 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 Deputy 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 Bank, Girobank and Trustee Savings Bank - 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

6.003 The treatment of investment bonds in the financial assessment for residential accommodation is complex because, in part, of the differing products that are on offer. For this reason councils should seek the advice of their legal departments when they arise. However it is possible to offer some general advice and councils 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 it's intrinsic nature as a policy of life assurance. N.B. The AOR are largely based on Income Support Regulations .

6.004 Councils 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 accommodation (see paragraph 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.

- 6.005 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 such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £16,000. (see also 8.015)

Effect of capital

Capital limits

- 6.006 A resident with capital of more than **£23,250** is liable to pay the standard charge for the accommodation, if in an LA home, or the full amount of the contracted fee if in an independent sector home. If a resident has more than **£23,250** there is no need to make a wider assessment of his ability to pay. Where a resident is one of a couple, or a civil partnership, the resident is liable to pay the standard rate or full contracted fee if they have more than **£23,250** in their own right; or if their own capital and their share of jointly held capital is more than **£23,250**.

Regulation 20

- 6.007 Capital of **£14,250** or less is fully disregarded (i.e. does not attract tariff income).
- 6.008 Capital over **£14,250** and up to and including **£23,250** is taken into account in full for the purposes of calculating the resident's tariff income from capital unless regulations specify otherwise - (see 6.019 onwards).

Tariff income

- 6.009 Where a resident has **£23,250** or less but more than **£14,250**, 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 **£14,250**. This is called "tariff income".

Regulation 28

A tariff income table is at Annex B

Examples

1. The resident has £14,750 capital. The £500 above **£14,250** is counted and a tariff income of £2 is taken into account as income.
2. A resident has £18,100 capital. The £3,850 above **£14,250** is counted and a tariff income of £16 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 his 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 reassessments.

- 6.010 When a resident who is subject to the 12-weeks property disregard tops-up from capital resources between the lower and upper capital 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 Section 11)

Beneficial ownership of capital

Does the resident own the capital?

- 6.011 A capital asset normally belongs to the person in whose name it is held. The following paragraphs provide guidance on how to establish beneficial ownership where there is a dispute.

Ownership disputed

- 6.012 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

1. A resident has £14,000 in a building society account in his own name. He says that £3000 is set aside for his grandson's education. However, there is no deed of trust or other legal arrangement which would prevent the resident using the whole amount for his own purposes. The resident is treated as the beneficial owner of the whole amount.
2. A resident has £10,000 in a bank account in his own name, and shares valued at £6,500. He provides evidence to show that the shares were purchased on behalf of his son, who is abroad, and that they will be transferred to his son when he returns to Britain. Although the resident is the legal owner, he is holding the shares in trust for his son, who is the beneficial owner. £10,000 is to be treated as the resident's capital.

Joint beneficial ownership of capital

- 6.013 Where a resident has joint beneficial ownership of capital, unless it is an interest in land (see Section 7), divide the total value equally between the joint owners, and treat the resident as owning an equal share. This method of treatment avoids administrative difficulties. Once the resident is in sole possession of his **actual** share, treat him as owning that actual amount.

Regulation 27(1)

Examples

1. A resident and her daughter have £21,000 in a joint building society account. The resident contributed £8,500 and the resident's daughter, £12,500. Treat the resident as owning £10,500.
2. The joint account is then closed and the resident and her daughter open separate accounts. The resident has £8,500 in her account. Treat her as owning £8,500.

Treatment of capital

Valuation

- 6.014 For the purposes of valuation only the value of a capital asset (for example property) **other than** National Savings Certificates (see 6.018) 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** **Regulation 23(1)(a)**

b) any outstanding debts secured on the asset, e.g. a mortgage. **Regulation 23(1)(b)**

- 6.015 A capital asset may have a current market value (e.g. stocks or shares) or a surrender (e.g. premium bonds) value. The current market value will be the price a willing buyer would pay to 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 are quoted in newspapers.

- 6.016 If the resident and the assessing officer both agree that, after deducting the amounts in paragraph 6.014 (a) and (b) (where appropriate), the total value of the resident's capital will be:
- a) more than **£23,250**; or
 - b) **£14,250** or less

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

- 6.017 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

- 6.018 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

- 6.019 "Secured on" means a legal charge or mortgage must have been made on the capital asset.

Example

A resident owns a property which comprises a house and garden (his 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 including the garden, 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).

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.

National Savings Certificates

- 6.020 The value of National Savings Certificates is:
- a) 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 1st July if they had been purchased on the last day of the issue; and
 - b) in any other case, the purchase price. ***Regulation 23(2)***

Annex C is a table of the value of each issue

Disregards on capital

- 6.021 Different types of capital will be disregarded for different periods as covered in paragraphs 6.022 to 6.039.

Capital held abroad

- 6.022 If capital is held in a country outside the UK (i.e. England, Scotland, Wales, 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. ***Regulation 24***

Transfer of capital to UK not prohibited

- 6.023 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 6.014.

Sources of valuation

- 6.024 To establish the value of capital in a country outside the UK, examples of the source of information include:

- 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

- 6.025 Examples of the information required in the valuation include:

- details of the asset
- names of the beneficial owners
- precise value of the asset (if known) but otherwise
 - an estimated value
- or
 - if the asset is for sale, the price at which it is for sale (if that genuinely represents its current market value)

Transfer to the UK prohibited

- 6.026 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 LA 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

- 6.027 If the evidence shows that some restriction prohibits the transfer of the value of any of the resident's assets to the UK, the LA 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

- 6.028 1. If the transfer of the capital is prohibited, the LA should take into account the value that a willing buyer would pay in the UK for the assets. This may quite possibly be less than the market or surrender value in the foreign country.
2. If restrictions do not exist, the capital should be valued as in 6.022 to 6.025.

Capital not immediately realisable

- 6.029 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 resident 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

- 6.030 The capital assets listed below are disregarded indefinitely:

- property in specified circumstances (see Section 7)
- surrender value of any:
 - life insurance policy **Schedule 4 paragraph 13**
 - annuity **Schedule 4 paragraph 9**
- payments of training bonus up to £200 **Schedule 4 paragraph 17**
- payments in kind from a charity **Schedule 4 paragraph 17**
- any personal possession such as paintings or antiques unless they were purchased with the intention of reducing capital for the purpose of reducing the LA charge (see paragraph 6.071) **Schedule 4 paragraph 8**
- any capital which is to be treated as income or student loans (see paragraphs 6.040 to 6.042 and 12.012 to 12.017 and Section 11) **Schedule 4 paragraph 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 non-haemophiliacs infected with HIV)
 - the Eileen Trust
 - the MFET Limited
 - the Independent Living Fund (2006)
 - the Skipton Fund
 - the London Bombings Relief Charitable Fund **Schedule 4 paragraph 15**

Note: On 11th January 2011, Ministers announced plans for new measures for people who contracted hepatitis C and HIV from contaminated blood. These measures will affect residential charging as a result of changes to the Income Support (General) Regulations 1987. DWP plan to make these changes in October 2011. Councils should ensure their charging policies reflect these changes, when they occur.

- 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) **Regulation 21(2) and Schedule 4 paragraph 10 and 19**

- the value of a right to receive:
 - income under an annuity **Schedule 4 paragraph 9**
 - outstanding instalments under an agreement to repay a capital sum **Schedule 4 paragraph 13**
 - payment under a trust where the funds derive from a personal injury **Regulation 21(2) and Schedule 4 paragraph 10**
 - income under a life interest or a life-rent **Schedule 4 paragraph 11**
 - income (including earnings) payable in a country outside the UK which cannot be transferred to the UK **Schedule 4 paragraph 12**
 - an occupational pension **Schedule 4 paragraph 15**
 - any rent **Schedule 4 paragraph 15**

(N.B. This does not necessarily mean that the income is disregarded - see section 8 for the appropriate guidance.)
- Capital derived from an award of damages for personal injury and which is administered by a court or which can only be disposed of by a court order or direction. **Regulation 21(2) and Schedule 4 paragraph 19**
- The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of personal injury and any surrender value of such an annuity. **Regulation 21(2) and Schedule 4 paragraph 9**
- Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income are treated as income (and disregarded in the calculation of income). **Regulations 16(5) and 15(2) and Schedule 3 paragraph 10**
- any Social Fund payment **Schedule 4 paragraph 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 paragraph 13**
- any capital resource which the resident has no rights to as yet, but which will come into his possession at a later date, e.g. on reaching a certain age.(reversionary interest) **Schedule 4 paragraph 4**
- payments from the Department for Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement **Schedule 4 paragraph 17**
- the amount of any bank charges or commission paid to convert capital from foreign currency to sterling **Schedule 4 paragraph 15**
- payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit) **Schedule 4 paragraph 17**
- community charge rebate / council tax rebate **Schedule 4 paragraph 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 3** of the National Assistance Act 1948 (mother and baby unit) - in this case take the payment fully into account) **Regulation 6A**
- the value of any ex-gratia payments made on or after 1st 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 paragraph 20**

- any payment made by a council under the Adoption and Children Act 2002, (under paragraph 3 of Schedule 4 to this Act), as amended by the National Assistance (Assessment of Resources) (Amendment) (England) Regulations 2005 (SI No.3277) whether income or capital.
- the value of any ex-gratia payments from the Skipton Fund made by the Secretary of State to people infected with Hepatitis C as a result of NHS treatment with blood or blood products. **Schedule 4 paragraph 15**
- Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at time of death of victim) (See also 6.034) **Schedule 4 paragraph 21**
- Any payments made under section 2 or 3 of the Age-Related Payments Act 2004 **Schedule 4 paragraph 25**
- Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a resident to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section. **Schedule 4 paragraph 26**
- Age-related payments made under Parts 2 and 3 of the Age Related Payments Regulations 2005 (SI No. 1983).
- Any payment made in accordance with regulations under section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital. **Schedule 4 paragraph 27**

Example

A former Far East 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 £25,000 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 £15,000. In this case **£14,250** 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 **£750**.

Disregarded for 12 weeks

6.031 In the case of a resident who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which he would otherwise normally occupy as his only or main residence subject to meeting the qualifying conditions that can be found in paragraph 12 of the Annex to LAC(2001)10. (see also 7.004 in CRAG)

Disregarded for 26 weeks or longer

6.032 The capital assets listed below are disregarded for 26 weeks, or longer where the LA consider this to be appropriate, e.g. where a resident is taking legal steps to occupy premises as his home and the legal processes take more than 26 weeks to complete.

- assets of any business owned (or part-owned) by the resident in which he was a self-employed worker, where he has stopped work due to some disease or disablement, but intends to take up work again when he is fit to do so (26 weeks from the date he took up residence in the residential accommodation, or longer where appropriate) **Schedule 4 paragraph 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 paragraph 7**

- premises which the resident intends to occupy as his home where he has started legal proceedings to obtain possession (26 weeks from the date he first sought legal advice or first commenced proceedings, or longer where reasonable to enable resident to obtain possession) **Schedule 4 paragraph 2**
- premises which the resident intends to occupy as his 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 paragraph 16**
- capital received from the sale of a former home, where the capital is to be used by the resident to buy another home (26 weeks from the date of the sale, or longer where appropriate) **Schedule 4 paragraph 3**
- 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 paragraph 7**
- grant made under a Housing Act which is to be used by the resident 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 paragraph 17**

Disregarded for 52 weeks

6.033 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 any compensation due to non-payment of:
 - Mobility supplement
 - Attendance Allowance
 - Constant Attendance Allowance
 - Disability Living Allowance
 - 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/ Pension Credit
 - Minimum Income Guarantee
 - Working Tax Credit
 - Child Tax Credit
 - Housing Benefit
 - Special payments to pre-1973 war widows (see 8.046 for details of these payments)

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 after the period for which they are treated as income has elapsed should be treated as capital. **Schedule 4 paragraph 6**

Example

A resident is assessed as being able to pay £75 per week pending receipt of Income Support/Pension Credit. It is explained to the resident that the charge will be re-assessed once Income Support/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 six weeks arrears of Income Support/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 are £120 rather than the full £210 Income Support/Pension Credit arrears. The remaining £90 becomes capital and is disregarded for 52 weeks.

- Payments or refunds for:

- NHS glasses, dental treatment, patient's travelling expenses
- cash equivalent of free milk and vitamins
- expenses in connection with prison visits

Schedule 4 paragraph 17

Disregard for 2 years

6.034 Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of vCJD to:

- the victim's parent (or guardian) for 2 year 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 ages of 16 and 17) – but with a minimum of 2 years

Schedule 4 paragraph 5

Disregarded for other periods

6.035 Assets of a business owned (or part-owned) by the resident in which he has ceased to be a self-employed worker, for a reasonable period to enable him to dispose of the business assets (see 6.036 onwards)

Schedule 4 paragraph 5

Meaning of reasonable period of disregard

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

Information required

6.037 The LA 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

6.038 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.

6.039 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

6.040 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 his accommodation or, in the case of a temporary resident whom the LA have decided not to charge (see paragraph 3.010), the first day on which the LA 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 **£16,000**, treat the instalments as income.

If it is **£16,000** or less, treat each instalment as capital.

Regulation.16(1)

Payments under an annuity

- 6.041 Any payment under an annuity will be treated as income (see 8.013). In cases of doubt councils should seek their own legal advice. **Regulation 16(2)**

Third party payments made under an agreement to meet excess fees

6.042 For details of the treatment of lump sums paid by third parties and residents accessing the 12-week property disregard, and how to convert to income see section 11.

Earnings

- 6.043 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. **Regulation 16(3)**

Income treated as capital

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

Tax refunds

- 6.045 Any refund of income tax charged on profits of a business or earnings of an employed earner. **Regulation 22(2)**

Holiday pay

- 6.046 Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment. **Regulation 22(3)**

Income from a capital asset

- 6.047 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 paid to the resident. This does not apply to income from certain disregarded capital. (see 8.017) **Regulation 22(4)**

Bounty Payments

- 6.048 Any bounty paid at intervals of at least one year from employment as

- a part time fireman
- an auxiliary coastguard
- a part time lifeboat man
- a member of the territorial or reserve forces.

Regulation 22(1)

Advance of earnings or loan from employer

- 6.049 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. **Regulation 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 LA should treat £94 as earnings and £200 as capital.

Irregular charitable and voluntary payments

- 6.050 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. **Regulation 22(7)**

Third party payments to help clear arrears

- 6.051 Payments in 6.050 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 LA they are not treated as belonging to the resident, see 11.007 to 11.008). **Regulation 22(8)**

Arrears of contributions to a child's custodian

- 6.052 Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child should be treated as capital. **Regulation 22(6)**

Trust funds

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

Property

- 6.054 The treatment of property is dealt with in Section 7.

Notional capital

- 6.055 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. **Regulation 25**
- 6.056 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. **Regulation 21**
- 6.057 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.
- 6.058 Notional capital may be capital:
- a) which would be available to him if he applied for it
 - b) which is paid to a third party in respect of the resident
 - c) of which the resident has deprived himself in order to reduce the amount of charge he has to pay

Capital available on application

- 6.059 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
- Regulation 25(2)**

3. capital derived from an award of damages for personal injury and which is administered by a court **Regulation 25(2)**
4. any loan which could be raised against a capital asset which is disregarded, for example the home **Regulation 25(2)**

6.060 The LA should distinguish between

1. capital already owned by the resident, but which in order to realise he must make an application for, for example
 - money held by the resident's solicitor
 - Premium Bonds
 - National Savings Certificates
 - money held by the Registrar of a County Court which will be released on application; **and**
2. capital **not** owned by the resident, but which will become his on application being made, for example
 - an unclaimed Premium Bond win

In the case of 1, the resident has the **actual** capital but not the notional capital. In the case of 2. the resident has no actual capital but should be treated as having **notional** capital.

Date to be taken into account

6.061 When the LA 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

6.062 The LA may consider that a resident has deprived himself of a capital asset **in order to** reduce his accommodation charge. If this is the case the LA may treat the resident as still possessing the asset. The following factors will need to be considered. **Regulation 25(1)**

6.063 In Income Support, 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 National Assistance (Assessment of Resources) Regulations 1992 do not impose this and it is within the LA's discretion to decide whether or not to treat the resident as still possessing the capital. Pension Credit specifies circumstances in which this does 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 though there is discretion whether to treat a person as having deprived themselves of capital.

Forms of capital to be considered

6.064 The LA should only consider questions of deprivation of capital when the resident ceases to possess capital which would otherwise have been taken into account.

e.g. a resident gives a diamond ring worth £2,000 to her daughter the week before she entered residential accommodation. The LA 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 her daughter with £2,000 which had previously been in a Building Society account, deprivation should be considered.

Ownership

- 6.065 The LA should decide from available evidence whether the resident owned the capital (see 6.011 and 6.012 for details of ownership).

Has deprivation occurred?

- 6.066 It is up to the resident to prove that he no longer has a resource. Failure to do so will result in the LA treating the resident as if he still **possesses** 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

- 6.067 **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. Councils will wish to give consideration, in respect of each case, to whether deprivation of assets has occurred i.e. did the individual place his capital in such an investment bond so that it would be disregarded for the purpose of the Assessment of Resources Regulations.

Purpose of disposing of an asset

- 6.068 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.

- 6.069 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 his spouse, or civil partner. The LA ignore the value of the resident's share in property while the spouse 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 his 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 himself of capital in order to reduce his residential accommodation charge.

A person has £24,000 in the bank. He is about to move permanently to a residential care home, and before doing so, pays off £3,500 outstanding on a loan for home improvements. It would be reasonable in these circumstances **not** to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.

A resident has £18,000 in a building society. Two weeks before entering the home, he bought a car for £10,500, which he gave to his son on entering the home. If the resident knew he was to be admitted permanently to a residential 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, it would not be reasonable to treat it as deliberate deprivation.

Timing of the disposal

- 6.070 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 his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation.

Conversion of capital to personal possessions

- 6.071 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 paragraph 6.030.
- 6.072 If the resident, in depriving himself of an actual resource, converted that resource into another actual resource of lesser value, he 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

- 6.073 If the LA decides that the resident has disposed of capital **in order to** avoid a charge or to reduce the charge payable, the LA 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. to recover the assessed charge from the resident; **or**
 - b. if the resident is unable to pay the assessed charge, to use the provisions of the Health and Social Services and Social Security Adjudication Act 1983 to transfer the liability for the part of the charges assessed as a result of the notional capital (**see Annex D**).

Diminishing notional capital

Calculation of the rate at which notional capital should reduce

- 6.074 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 he is paying for the accommodation and the rate he would have paid if he was not treated as possessing the notional capital **Regulation 26**

Example

A resident is assessed as having notional capital of £20,000 plus actual capital of £6,000. This results in him having to pay the standard charge for the cost of the accommodation e.g. £400.

If he did not possess the notional capital, his capital would not affect his ability to pay for the accommodation so, based on an income of £120.60 and a personal allowance of, for example, £22.60 he would be assessed as paying a charge of £98.

The notional capital should be reduced by £302 per week i.e. the difference between the sum he has to pay because of the notional capital (£400) and the charge he would have had to pay if the notional capital did not exist (£98).

SECTION 7 - TREATMENT OF PROPERTY

General

- 7.001 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. LAs also have an element of discretion over whether to take the value of a property into account (see 7.010)

Property to be disregarded

- 7.002 The value of a dwelling normally occupied by a resident as his home should be ignored if his stay in a residential care or nursing home is temporary and

- he intends to return to that dwelling, and the dwelling is still available to him; **or**
- he is taking reasonable 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.

N.B. If the resident's stay is initially thought to be permanent but turns out to be only temporary, the dwelling he normally occupies as his home should be treated in the same way as if he had been temporary from the outset. **Schedule 4 paragraph 1**

- 7.003 Where the resident no longer occupies a dwelling as his home, its value should still be disregarded where it is occupied in whole or in part by

- the resident's partner, former partner or civil partner (except where the resident is estranged or divorced from the partner, former partner or civil partner)
- a lone parent who is the claimant's estranged or divorced partner
- a relative (as defined at 7.004) of the resident or member of the residents family (as defined at 7.007) who
 - is aged 60 or over, or
 - is a child of the resident aged under 18, or
 - is incapacitated.

Schedule 4 paragraph 2

Disregard for the first 12 weeks of a permanent stay

- 7.004 In the case of a resident who becomes a permanent resident on or after 9 April 2001, the value of any dwelling which he would otherwise normally occupy as his only or main residence should be disregarded for the first 12 weeks of a permanent stay, subject to meeting the qualifying conditions which can be found in paragraph 12 of the Annex to LAC(2001)10. This may not be their first permanent admission to permanent residential care.

Schedule 4 paragraph 1A

- 7.005 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.

- 7.006 The 12 week property disregard applies from the first day of permanent residential care provided by a local authority under Part 3 of the National Assistance Act 1948. The disregard applies irrespective of whether the resident was already in a care home as a self-funder before being provided with Part 3 accommodation. This is because the legislation defines

“resident” in this context as a person who is provided with accommodation under Part 3 of the 1948 Act or a prospective resident (a person for whom accommodation is proposed to be provided under Part 3 of the 1948 Act).

Meaning of relative

7.007 The term "relative" in paragraph 7.003 includes any of the following:

- A. parent (including an adoptive parent)
- B. parent-in-law
- C. son (including an adoptive son)
- D. son-in-law
- E. daughter (including an adoptive daughter)
- F. daughter-in-law
- G. stepparent
- H. stepson
- I. stepdaughter
- 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.

Meaning of Family

7.008 The term "family" in paragraph 7.003 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"

7.009 The meaning of "incapacitated" in paragraph 7.003 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: incapacity benefit, severe disablement allowance, disability living allowance, attendance allowance, constant attendance allowance, or an analogous benefit;

or

- 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

7.010 Where the resident has acquired property which he intends eventually to occupy as his 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 paragraph 16

Discretion to disregard property

7.011 Where the LA considers it reasonable to do so, they can disregard the value of premises not covered in paragraphs 7.002 to 7.008 in which a third party lives. LAs 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. These are only examples and not exhaustive. **Schedule 4 paragraph 18**

7.012 As with issues of deprivation, LA's should consider the intention behind the occupation of the premises by the third party (e.g. whether it was to care for the resident or whether it was in anticipation of avoiding the inclusion of the property in the financial assessment). It would only be reasonable to disregard the property in the first example. The timing of the move into the property by the third party and the prognosis of the resident at that time will also be relevant.

Example

A close friend gives up their own home to care for the resident at a time when residential care cannot be anticipated. This would be reasonable circumstances for the LA to give consideration to the exercise of discretion.

7.013 Where the LA has decided to disregard the value of a property, it is left to the LA to decide if and when to review that decision. It would be reasonable, for example, where the LA has been ignoring the value of a property because a long term carer was living there, for the LA to begin taking account of the value of the property when the carer dies or moves out.

Property to be taken into account

Legal and beneficial owners

7.014 The treatment of property will depend on whether the resident is a legal or a beneficial owner. A legal owner is a person in whose name the property is held. A beneficial owner is one who is entitled to receive the profits or proceeds of property. In most cases the legal and beneficial owners will be the same person but, where this is not the case, the value of the property will be valued according to the following paragraphs.

Legal ownership

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

Beneficial ownership

- 7.016 Where the resident is the sole beneficial owner of a property the capital value should be taken into account in full. If the resident and the LA agree that the value of the property, after taking into account any deductions in 6.014 (expenses of sale and debts secured on the asset), is over **£23,250**, or when added to any other capital assets will take the total capital over **£23,250**, 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 beneficial ownership of property

- 7.017 Where a resident is a joint beneficial owner of property, i.e. he has 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

1. the resident's ability to re-assign the beneficial interest to somebody else
2. there being a market i.e. the interest being such as to attract a willing buyer for the interest. ***Regulation 27(2)***

- 7.018 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.

- 7.019 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 his 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.

- 7.020 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 for its future use. The law of equity may operate to resolve doubts about beneficial ownership, by deciding what is reasonable by reference to 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. He shares 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 his 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 percent would be deducted from the value of his share to cover the cost of transferring the interest to the buyer

Property held in a shared trust

- 7.021 Where a property is held in Trust and the resident is both a joint trustee **and** joint beneficiary, he legally owns the property as a trustee of the Trust, but purely on a "fiduciary" basis (i.e. he is legally obliged to administer the Trust for the benefit of the Trust - as a whole, and not for his own particular purposes). His **real** interest is that of a **beneficial** owner, and falls to be valued accordingly (paragraphs 7.018 to 7.019).

Sale of jointly owned property

- 7.022 See the example at 6.069 for the consideration of deprivation of capital where a jointly owned property is sold and the resident passes some of his share of the proceeds to the joint owner.

Property owned but rented to tenants

- 7.023 Where a resident owns property, the value of which takes the resident's total capital above **£23,250**, 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 LA in order to reduce the accruing debt.

Deferred payments

- 7.024 Where a council has agreed to enter to into a deferred payments arrangement with the resident, the resident's resources should be assessed under the Assessment of Resources Regulations as set out in CRAG. When the assessment has been completed and it has been determined that the person has insufficient income and capital (that is, below the upper capital limit) excluding their property, to meet their care home fees deferred payments may be offered. The difference between what a resident is assessed as being able to contribute from means-tested income and assets including his former main or only home and the amount he would be assessed as being able to contribute if his main or only home were disregarded is then deferred. A draft legal agreement that councils may consider using, or adapting, when reaching deferred payments agreement with individual residents is available on www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/FinanceAndPlanning/ResidentialCare/fs/en. It should be noted that use of this draft legal agreement is not obligatory, and that the agreement only applies to the placing of a legal charge.
- 7.025 Councils should bear in mind that deferred payments under section 55 of the Health and Social Care Act 2001 are distinct from the pursuit of debt through section 22 of HASSASSA 1983 (See Annex D for explanation of HASSASSA). Deferred payments should be offered when individuals are willing to pay their assessed contribution but do not wish to do so immediately. Section 22 of HASSASSA applies to situations where residents are unwilling to pay their assessed contribution, either now or in the future, and a debt arises.

Note: Local Authorities should liaise with PCT's to provide appropriate information to patients, and make every effort to ensure that residents who are appealing against refusal of CHC funding are made aware of the scheme.

SECTION 8 - INCOME OTHER THAN EARNINGS

What is income?

8.001 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).

8.002 A payment of income is generally 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

8.003 Income is treated in one of three ways:

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

8.004 Paragraphs 8.005 to 8.064 below list the types of income in each category, and provide further details where necessary.

Income taken fully into account

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

- Most Social Security benefits (8.006)
- Annuity income (except home income plans) (8.013)
- 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 3** of the National Assistance Act 1948 (see 8.038 for other cases)
- Home Office *ex gratia* incapacity allowances
- Income from certain disregarded capital (8.015)
- Income from an insurance policy (except mortgage protection insurance) (8.016)
- Income from certain sub-lets (8.017)
- Occupational/Personal Pensions
- Refund of income tax
- Third party payments made to meet higher fees (see Section 11)

- Trust income (see Section 10)
- War orphan's pension

Regulation 15(1)

Social Security benefits

8.006 The Social Security benefits listed below are taken fully into account. However, see 8.047 for the treatment of certain dependency increases.

- Attendance Allowance/ Disability Living Allowance (Care component) (this also includes any Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Allowance (ESDA) payable with Industrial Injuries Disablement Benefit or War Disablement Benefit) paid to permanent residents - see 3.014 for treatment of AA / DLA(Care) paid to temporary residents.
- Child Benefit where the child is accommodated with the resident under Part III of the National Assistance Act 1948 (see 8.038 for other cases).
- Disability Working Allowance
- Working Families Tax Credit/Working Tax Credit
- Guardians Allowance
- Housing Benefit - where the resident has been admitted permanently into unregistered accommodation or LA accommodation not providing board so Housing Benefit is being paid to meet the accommodation charge.
- Income Support/Pension Credit (but see paragraph 8.039 for exception)
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit (IIDB) (8.008) - see also above and 3.014 for treatment of CAA and ESDA paid with IIDB
- Incapacity Benefit
- Carer's Allowance
- Invalid Care Allowance
- Jobseekers Allowance
- Maternity Allowance
- Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme payments (8.009) - see above and 3.014 for CAA and ESDA paid with these payments
- Retirement Pension (8.010)
- Severe Disablement Allowance
- Widow's benefit (widow's pension (WP) and widowed mother's allowance (WMA) (8.011). See Section 6 (Capital) for treatment of widow's payment (wpt)
- Workmen's compensation (8.012) - see above and 3.014 for treatment of AA/CAA paid under the Workmen's Compensation Act **Regulation 15(1)**

Deductions from benefits

- 8.007 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. **Regulation 15(3)**

Industrial Injuries Disablement Benefit (IIDB)

- 8.008 Industrial Injuries disablement benefit is taken fully into account. However, some additional allowances may be paid with IIDB. These are:

- a) Exceptionally Severe Disablement Allowance (ESDA);
- b) Constant Attendance Allowance(CAA); and
- c) Reduced Earnings Allowance (REA).

ESDA and CAA are fully disregarded for temporary residents (see 3.022). REA is taken fully into account.

Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme

- 8.009 These payments are made to people who are not entitled to workmen's compensation (8.012) or IIDB (8.008). They are taken fully into account. AA may be paid with these payments - see 3.022 and 8.006.

Retirement Pension

- 8.010 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 3.022 and 8.006 for treatment of AA.

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

- 8.011 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

- 8.012 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 3.022 and 8.006 for treatment of AA.

Annuity income

- 8.013 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.

- 8.014 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 8.029 to 8.034); or
- b) a gallantry award e.g., Victoria Cross Annuity, George Cross Annuity (fully disregarded – see paragraph 8.049).

Income from Investment Bonds

- 8.015 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 councils should

seek the advice of their own legal departments when they arise. However it is possible to offer some general advice.

- 8.016 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 his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £16,000. (See also 6.002 to 6.005)

Income from certain disregarded capital

- 8.017 Income from capital will generally be treated as capital and not income (see 6.047 and Reg 22(4)).

If there is any corresponding *capital* disregard then that will apply (for example the 52 week capital disregard for a payment in consequence of personal injury and the capital disregard for personal injury damages which are administered by a court).

However, income which comes from certain forms of disregarded capital is treated as income. This will be the case where the capital is:

- the normal dwelling of a temporary resident (but see 3.018 for disregard of income needed to cover housing commitments)
- business assets which the resident is taking steps to dispose of
- any capital consisting of the value of trust funds which derive from a payment for personal injury and the value of the right to receive any payment under that trust
- a dwelling which the resident intends to occupy as his home and which he is taking steps to occupy
- the former dwelling of the resident which is occupied by a partner or relative of the resident who is over age 60, under 18, 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 his home and in respect of which he is taking legal steps to obtain possession
- any premises which the resident intends to occupy as his home but which needs repairs or alterations in order for the resident to occupy

Income from such capital is generally not disregarded in the calculation of income.

However, in the final five situations only, income which covers mortgage repayments, payments for water rates and council tax shall be disregarded - see paragraph 8.041.

Schedule 3 paragraph 14

Further, as stated below payments at regular intervals from personal injury trust funds are disregarded in the calculation of income.

Income from capital to which there is actual or deemed beneficial entitlement is also disregarded as *income* for example income from capital consisting of a payment in consequence of personal injury and income from capital derived from personal injury damages

which are administered by a court. However, this does not apply to income from the value of trust funds derived from a payment in consequence of personal injury.

Income from insurance policies

8.018 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 8.037).

Income from certain sub-lets

8.019 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 8.035.

Third party payment made to meet higher fees

8.020 For full details of the treatment of third party payments, see Section 11.

Trust income

8.021 See Section 10

Income partly disregarded

£10 disregard

8.022 The following types of income attract a £10 disregard:

- Payments to victims of National Socialist persecution (paid under German or Austrian law) **Schedule 3 paragraph 11**
- Civilian war injury pension **Schedule 3 paragraph 11**
- War disablement pension (8.024) - see also 3.022 and 8.006 for treatment of AA/CAA paid with WDP
- Payments from the Armed Forces Compensation Scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004
- War Widows pension and War Widowers pension - but see 8.053 for War Widows and War Widowers Special Payments **Schedule 3 paragraph 11**

Overall disregard

8.023 Where more than one payment qualifies for a £10 disregard, the amount disregarded **overall** is £10. The only exception is where two 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 paragraph 31**

War disablement pension

8.024 War disablement pension may include various additions and increases. Disregard £10 of the total amount, in addition to any disregard which may be appropriate on CAA which may also be paid with War disablement pension - see 3.022 and 8.006 for treatment of AA and CAA.

Other disregarded sums

The savings disregard

8.025 A savings disregard based on qualifying income was introduced on 6 October 2003 and will be made to residents as follows.

For individuals

- Where a resident is in receipt of qualifying income of less than £103.15 per week there will be no Savings Disregard made.
- Where a resident is in receipt of qualifying income between £103.15 and £137.35 per week the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £5.75 whichever is less.
- Where a resident is in receipt of qualifying income in excess of £137.35 per week, and a savings credit reward is in payment, a flat rate savings disregard of £5.75 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 (around £188 but could be higher if the resident is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £5.75 is made.

For couples

- Where a resident who is part of a couple (including a civil partnership) and is in receipt of qualifying income of less than £164.55 per week there will be no savings disregard made.
- Where a resident who is part of a couple (including a civil partnership) and is in receipt of qualifying income between £164.55 and £209.70 per week the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £8.60 whichever is less.
- Where a resident who is part of a couple (including a civil partnership) and is in receipt of qualifying income in excess of £209.70 per week, and a savings credit reward is in payment, a flat rate savings disregard of £8.60 per week is made irrespective of how much the savings credit payment is.
- Where a resident who is part of a couple (including a civil partnership) and has qualifying income above the limit for receiving a savings credit reward (around £277 but could be higher if the resident is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £8.60 is made.

The values of £137.35 and £209.70 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 I. Examples of how the savings reward is calculated, plus a list of qualifying income, are given in the document *Pension Credit and the Savings Disregard* on the website www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/FinanceAndPlanning/ResidentialCare/fs/en

Occupational pensions, personal pensions and retirement annuity contracts

8.026 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 residential care or nursing 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 his spouse. If the resident passes less than 50 per cent of any of these payments mentioned above, or none of them, to his 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 paragraph 10A

- 8.027 Where an unmarried partner, rather than a spouse or civil partner, is involved the LA should consider their discretionary powers to vary the PEA (see 5.005). 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 5.005).
- 8.028 Where a spouse or civil partner is legally entitled to receive part of the occupational pension, personal pension and 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 his income. Fifty per cent of the amount actually in payment to the resident should be disregarded in accordance with 8.030.

Annuity income from home income plan

- 8.029 There are different types of annuity plans (see paragraphs 8.013 and 8.014). 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 his home obtains a loan secured on the property. He uses part of the loan (or all of it) to buy an annuity which provides an income. He 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.
- 8.030 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 his home. This might happen where a couple have a joint annuity secured on the home, and one partner continues to occupy the home when the other moves permanently to a residential care or nursing 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.
- 8.031 Where neither the resident nor any other annuitant occupies the dwelling as his home, no disregard can be allowed on the income. When a single person moves permanently to a residential care or nursing home, therefore, and ceases to occupy the dwelling on which the loan is secured as his 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.
- 8.032 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 8.033) 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 weekly interest on the loan in any other case.
- 8.033 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; and
 - 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 his home at the time the interest is paid.

8.034 Where the resident is using part of the annuity income to repay the loan, disregard the amount he pays 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 paragraph 12**

Income from sub-letting

8.035 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 his home. This will therefore apply only to assessing a temporary resident. The disregard is shown in Annex A. See also paragraph 8.019 for income from sub-letting part of the property which is not part of the living accommodation, e.g. garage or garden). **Schedule 3 paragraph 12**

Income from boarders

8.036 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 £100 per week as income from a boarder living in his previous dwelling. The first £20 is ignored plus half of the remaining £80 (i.e. £40) making a total of £60 of the £100 to be ignored. **Schedule 3 paragraph 13**

Mortgage protection insurance policies

8.037 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.

8.038 The income from these policies qualifies for a disregard **only** where the purpose of the loan is:

- a) to acquire or retain an interest in the dwelling occupied as the home; or
- b) for repairs or improvements to the dwelling occupied as the home.

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

8.040 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 paragraph 19**

It should be remembered that **Income Support/Pension Credit** may be adjusted to take account of the income from the policy, so income previously disregarded under 3.015 or 8.044 may no longer be in payment.

Income from certain disregarded capital

- 8.041 Where income is received from certain property of which the capital value is being disregarded (see 8.017), 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 paragraph 14**

Income fully disregarded

8.042 The following types of income are fully disregarded:

- See 3.022 for the treatment of AA and DLA (Care) for temporary residents and 8.006 for permanent residents.
- That part of an Income Support/Pension Credit award which is paid in respect of home commitments for temporary residents (8.043)
- Supporting People payments made by a LA to or on behalf of a resident for housing support charges of a kind falling within Schedule 1B to the Housing Benefit (General) Regulations 1987 (as in force immediately before 1 April 2003. (3.017)
- Certain charitable and voluntary payments (8.058 to 8.061)
- Child Support Maintenance Payments and Child Benefit, unless the child is accommodated with the resident under Part 3 of the National Assistance Act 1948 (mother and baby units - see 8.005)
- Child Tax Credit
- Guardian's Allowance
- Christmas bonus (8.045)
- Age-related payments made under Parts 2 and 3 of the Age Related Payments Regulations 2005 (SI No. 1983)
- Any payment from:
 - the Macfarlane Trust
 - the Macfarlane (Special Payments) Trust
 - the Macfarlane (Special Payment)(No.2) Trust
 - the Fund (payments to non-haemophiliacs infected with HIV)
 - the Eileen Trust
 - the MFET Limited
 - the Independent Living Fund (2006)
 - the Skipton Fund
 - the London Bombings Relief Charitable Fund

Schedule 4 paragraph 15

Note: On 11th January 2011, Ministers announced plans for new measures for people who contracted hepatitis C and HIV from contaminated blood. These measures will affect residential charging as a result of changes to the Income Support (General) Regulations 1987. DWP plan to make these changes in October 2011. Councils should ensure their charging policies reflect these changes, when they occur.

- Council Tax Benefit

- Disability Living Allowance (Mobility Component) and Mobility supplement
- Dependency increases paid with certain benefits (8.047)
- Gallantry awards (8.049)
- Income frozen abroad (8.050)
- Income in kind (8.051)
- Social Fund payments (including winter fuel payments)
- Certain payments made to trainees (8.052)
- War widows and widowers special payments (8.053)
- Work expenses paid by employer, and expenses paid to voluntary workers (8.056 and 8.057)
- Any payment made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002, as amended by the National Assistance (Assessment of Resources) (Amendment) (England) Regulations 2005 (SI No.3277). (For example, if a family adopts a brother and sister but need to build an extension to their house to make a bedroom for the sister, this type of payment for this would be disregarded)
- Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a resident to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section. **Schedule 3 paragraph 28J**
- Any payment made in accordance with regulations under section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian. **Schedule 3 paragraph 28K**

Income Support/Pension Credit paid for home commitments

- 8.043 Under the **Income Support/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.
- 8.044 Any **Income Support/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/Pension Credit** award is fully disregarded. The amount awarded for home commitments is shown as a separate entry on form A124 (clerical) or computer produced Award Calculation Sheet which **DWP** sends to the resident.
- Schedule 3 paragraph 26**

Christmas Bonus

- 8.045 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;

- Incapacity Benefit or Severe Disablement Pension;

The Christmas bonus is fully disregarded in assessing the charge. **Schedule 3 paragraph 22**

Payments from any of the Macfarlane Trusts, the Fund, the Eileen Trust, the MFET Limited, the Independent Living Funds, the Skipton Fund or the London Bombing Relief Fund

- 8.046 Payments from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payment)(No.2) Trust, the Fund, the Eileen Trust, the MFET Limited, the Independent Living Fund (2006), the Skipton Fund and the London Bombing Relief Fund 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 (2006) should cease when someone enters residential accommodation. **Schedule 3 paragraph 24**

Dependency increases paid with certain benefits

- 8.047 Dependency increases for adults can be paid with Job Seeker's 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 Unemployment 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 increase should be disregarded in full.

Schedule 3 paragraph 28B

- 8.048 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 7th 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 paragraph 28G

Gallantry awards

- 8.049 Gallantry awards are:
- Victoria Cross Annuities
 - George Cross Annuities

These payments are fully disregarded.

Schedule 3 paragraph 8

Income frozen abroad

- 8.050 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 paragraph 16

Income in kind

- 8.051 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 paragraph 14

Payments made to trainees

- 8.052 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 widows and war widowers special payments

- 8.053 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 G, are fully disregarded.
- 8.054 A small number of widows and widowers do not qualify for the normal UK war 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 widowers special payments scheme. The Secretary of State for Defence may therefore make special payments, which are analogous to the war widows and widowers special payments. Such payments are fully disregarded in the assessment.
- 8.055 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 **Veterans Agency** at Norcross, Blackpool, Lancashire tel. 0800 169 2277. They will need to know the name and reference number (shown on the pension book) of the war widow and widower. **Schedule 3 paragraph 25**

Work expenses paid by employer

- 8.056 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 paragraph 3**

Expenses paid to voluntary workers

- 8.057 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 paragraph 2**

Charitable and voluntary payments

General

- 8.058 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.
- 8.059 Generally, a charitable or voluntary payment which is not made regularly and is not due to be made regularly is treated as capital, with certain exceptions. **Regulations 22(7)**
- 8.060 Payments which are made regularly or due to be made regularly are fully disregarded, with certain exceptions. **Schedule 3 paragraph 10 & 31**

Income treated as capital

- 8.061 Certain forms of income are treated as capital - see 6.044 to 6.052 for details. **Regulation 22**

Notional income

- 8.062 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:
- a) income which is paid to the LA by a third party to contribute towards the fees of a home – see Section 11.

- b) income which would be available on application, see 8.065 about Rehabilitation Allowance.
- c) income which is due but has not yet been paid
- d) income which the resident has disposed of where the LA is satisfied that the resident has deprived himself of that income in order to reduce the charge payable for his accommodation.

Guidance on the factors to be considered is in the following paragraphs. **Regulation 17**

8.063 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.

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

Income available on application

8.065 Subject to certain exceptions, income which the LA 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. **Regulation 17(2)**

Amount of income

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

- 1. income payable under a discretionary trust
- 2. income payable under a trust derived from a payment made in consequence of a personal injury where such income would become available on application but has not been acquired **Regulation 17(2)**
- 3. income from capital derived from an award of damages for personal injury which is administered by a court **Regulation 17(2)**
- 4. Working Tax Credit

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

8.067 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. **Regulation 17(2)**

8.068 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 LA can not assume are satisfied. **Regulation 17(2)**

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

- 1. unclaimed councillor's attendance allowance
- 2. unclaimed Social Security benefit (but not Severe Disablement Allowance).
- 3. occupational pension not claimed.

Date taken into account

8.070 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 LA should:

1. assume the application was made on the date the LA first became aware of the possible income; **and**

2. take into account any time limits which might limit the period of arrears.

Regulation 17(2)

Examples

1. A resident aged 69 is not receiving a retirement pension to which he would have been entitled had he applied. The LA becomes aware of the possible entitlement on 30/9/03. As retirement pension can only be backdated a year from date of claim the LA should only take it into account as income from 1/10/02.
2. The LA become aware that a resident aged 64 is not receiving an occupational pension to which he would have been entitled from the age of 60. On his 65th birthday his former employers state that he will be paid all the pension due from age 60. The LA should take the pension into account from age 60.

Personal Pensions and Retirement Annuity Contracts

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

Regulation 17(2)

Income due but not paid

- 8.072 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

1. income payable under a discretionary trust
2. income payable under a trust whose funds are derived from a payment made in consequence of a personal injury
3. occupational pension which is not being paid, because:
 - a. the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; **or**
 - b. the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

Regulation 17(2)

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

1. superannuation or other income due but not yet paid, say, because of a strike by pay clerks
2. pension or grant which has ceased temporarily, say, due to a postal strike.

Deprivation of income

- 8.074 A resident is to be treated as possessing income of which he has deprived himself **for the purpose of** paying a reduced charge.

Regulation 17(1)

Example

A resident is assessed as having to pay the full charge based on his income from retirement pension and occupational pension. When reviewing the charge the LA find that he has sold his right to receive the occupational pension thereby reducing the charge he is 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

- 8.075 A person will have deprived himself of a resource if, as a result of his own act, he ceases to possess that resource.

Questions for consideration

- 8.076 Where the resident appears to have deprived himself of income the LA should consider the questions covered in the following paragraphs.

Was it the resident's income?

- 8.077 Where a person, before he deprived himself of an income, was in receipt of that income it is reasonable to assume that the resource belonged to him. 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?

- 8.078 Deprivation will have occurred if a person relinquishes, or transfers to another person, an income which :
1. he has been receiving or was due to receive **and**:
 2. would have continued to receive had he not relinquished or transferred it.
- 8.079 It is up to the resident to prove that they no longer have the income. If he cannot prove this, the LA should treat the resident as still possessing the **actual** income.

Purpose of the disposal of income

- 8.080 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

- 8.081 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.
- 8.082 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 LA 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 Security Adjudication Act 1983 (**see Annex D**).

Conversion of income to a capital asset

- 8.083 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 LA should consider taking account of:
1. the amount of the former income resource **or**
 2. 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

1. 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 LA decided that the resident sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as receiving £10 per week notional income.
2. A resident sold the right to receive income under an annuity of £10 per week for £2,800. The resident's other capital was £11,600 and so the total capital of £14,400 produced a tariff income of £4 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as notionally receiving the £6 difference between the tariff income and the original £10, per week from the annuity.
3. A resident sold the right to receive income under an annuity of £10 per week for £2,000. The resident's other capital of £13,600 produced a tariff income of £1 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. $\text{£}2,000 \div \text{£}250$). 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

- 8.084 If it is decided that the resident has disposed of income **in order to** avoid a charge or to reduce the charge payable, the LA will need to assess the charge payable using the resident's notional income. **Regulation 17(1)**
- 8.085 If the resident is unable to pay the charge assessed using the notional income, the LA should consider whether the provisions of section 21 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 (see Annex D).

SECTION 9 - EARNINGS

What are earnings?

9.001 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 his home and the place of employment. **Regulations 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

9.002 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/personal pension

Gross earnings

9.003 "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

9.004 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 deduction 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

Regulation 14

Occupational pension

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

Personal pension

9.006 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

9.007 The amount of Statutory Sick Pay, Statutory Maternity Pay, 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 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 LA should ask the employer for clarification.

***Schedule 9 paragraph 4 IS Regulations
Schedule 2 paragraph 3 Assessment Resources Regs***

Period over which earnings should be taken into account

Payments for regular periods

9.008 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. ***Regulation 18(1)(a)***

Payments which are not for fixed periods

9.009 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/Pension Credit in payment

9.010 Where a resident, who is getting Income Support/Pension Credit, receives a payment of earnings which is not for a set period and is more than the weekly amount of benefit in payment it is unreasonable to take this into account in a particular week and it is therefore appropriate to apportion the payment over a number of weeks. The appropriate DWP Office will calculate a number of weeks for which Income Support/Pension Credit will be withdrawn and the local authority should follow the same process (i.e. divide the earnings payment by the Income Support/Pension Credit payment plus the standard earnings disregard). This will be the number of weeks for which Income Support/pension Credit will be withdrawn and that a proportion of the earnings should be included in the financial assessment. If the answer is

not an exact number of weeks the balance should be included in the final part week together with the reduced amount of Income Support/Pension Credit payable. **Regulation 18(2)**

Example

A resident earns a sum of £800 and was receiving IS/PC of £130 per week. A sum of £20 would be disregarded in the calculation of IS/PC

Earnings	800
IS/PC (£130) plus Earnings Disregard	150
Period of IS/PC withdrawal (800 divided by 150)	5.33 weeks
Amount to be included:	
in the financial assessment for 5 weeks	150
in the FA during the 6 th week in addition to actual IS/PC in payment	50

Income Support/Pension Credit not in payment

- 9.011 Where Income Support/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.

Regulation 18(1)(b)

Example

A resident is paying a charge (A) of £120, the standard charge (B) is £550

He receives a payment (C) of £1,750, in respect of which he 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:

$$C \div (B - A) = 4.07 \text{ weeks}$$

The resident pays the standard charge of £550 less the £20 disregard for 4 weeks (i.e. he pays £530 which is £410 more than he was paying).

At the end of five weeks he has used up £1,640 (4 x £410) and has been allowed to keep £80 (4 x £20).

He therefore has £110 of the £1,750 left to be taken into account in week 5, less the £20 disregard.

Net earnings of self - employed earners

- 9.012 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

Regulation 11

Assessing the weekly net earnings of self - employed earners

- 9.013 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.
- 9.014 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 seven. Every effort should be made to reach a fair estimate of 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. **Regulation 12(1)**

Royalties or fees from copyright

- 9.015 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 9.010 and 9.011. **Regulation 18(2)**

Disregards

- 9.016 The amount of earnings to be taken into account in the assessment is the net amount calculated in accordance with paragraphs 9.001 to 9.015 above, less the appropriate disregard.
- 9.017 Disregard £5 of the net weekly earnings unless the resident qualifies for a different disregard under paragraph 9.017 to 9.019 or a discretionary disregard under paragraph 2.008. **Schedule 2 paragraph 4**

People entitled to a £20 disregard

- 9.018 Disregard £20 of the net weekly earnings if the resident:
- a) receives Income Support/Pension Credit which includes a disability premium or a carer's premium;
- or:**
- b) is under the qualifying age (see Annex J) and:
 - (i) receives one of the following benefits:
 - Disability Living Allowance (mobility or care components at any rate)
 - Mobility supplement
 - Severe Disablement Allowance
- or:**
- (ii) has an invalid carriage or other vehicle provided under:
 - paragraph 9 of schedule 1 to the National Health Service Act 2006 (previously section 5(2)(a) of the National Health Service Act 1977); or

- in Scotland, under section 46 of the National Health Service (Scotland) Act 1978

or:

(iii) receives a grant under:

- para 2 of Schedule 2 of the National Health Service Act 2006 (previously the National Health Service Act 1977; or
- in Scotland, section 46 of the National Health Service (Scotland) Act 1978

or:

iv) is registered as blind;

or:

v) has provided 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) has ceased receiving Attendance Allowance or Disability Living Allowance solely because he has been in residential accommodation for more than four weeks

or:

c) is over the qualifying age (see Annex J); **and**

satisfied one of conditions in b) above before reaching the qualifying age; **and**

has worked continuously since reaching the qualifying age

or:

d) is a lone parent.

or:

e) receives Carers Allowance

Schedule 2 paragraph 3

People who have ceased or interrupted employment

9.019 In the case of a resident who has been employed as an employed earner and whose employment has ended or been interrupted, any earnings paid, or due to be paid in respect of that employment shall be fully disregarded. **Schedule 2 paragraph 1**

People who have ceased self-employment

9.020 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 paragraph 2**

Earnings frozen abroad

- 9.021 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 paragraph 15***

SECTION 10 - TRUST FUNDS

Application of the section

10.001 This section does not apply to the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane ((Special Payment)(No.2) Trust, the Fund, the Eileen Trust, the MFET Limited, the Independent Living Fund (2006), the Skipton Fund and the London Bombing Relief Fund. See paragraph 8.042.

What is a Trust?

10.002 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)).

10.003 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

10.004 Trustees may be:

- the Public Trustee
- the Court of Protection
- a professional person such as a solicitor
- the parents of a beneficiary who cannot act for himself
- any other responsible person, perhaps appointed under the terms of a will

10.005 Trustees' powers are governed by:

- a) the terms of any trust deed;
- b) the law of equity; and
- c) the Trustee Act 1925 or the Administration of Estates Act 1925 in England and Wales or the Succession (Scotland) Act 1964 in Scotland.

Identifying a Trust

10.006 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

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

- a) he has absolute entitlement to capital or income from the trust (10.009 to 10.019); or

- b) the trustees have discretion to make payments of capital or income to him (10.020 to 10.023).

Information needed

10.008 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

10.009 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 his affairs. In these cases, a Deputy appointed by the Court of Protection could call for the transfer on behalf of the beneficiary.

Information needed

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

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

Absolute entitlement to capital

10.011 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 his **actual** share, treat him as owning that actual amount.

10.012 Where the resident is not in possession of capital to which he has absolute entitlement, but the capital would become available to him upon application being made, treat him as possessing that capital as an actual capital asset. See Section 6 (Capital).

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

10.014 The capital asset constitutes a *chose in action* ("a thing which can be sued for"). 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.

10.015 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 **£23,250**; or
- b) less than **£14,250**

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

Absolute entitlement to income

10.016 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 10.018 for treatment of the income).

Schedule 4 paragraph 13

10.017 A person who has a contingent interest in capital (as in paragraph 10.013) becomes absolutely entitled to receive the income from the capital on his 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 10.016.

10.018 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.

Regulation 17(1)

Absolute entitlement to capital and income

10.019 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.

Regulation 22(4)

Discretionary trusts

Information needed

10.020 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

10.021 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)).

10.022 Payments from a discretionary trust are effectively voluntary payments. Treat them in accordance with the normal rules for the treatment of voluntary payments (paragraphs 8.058 to 8.061).

10.023 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 8.058 to 8.061).

Compensation for personal injury

Information needed

10.024 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

10.025 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

10.026 Where the capital consists of any payment made in consequence of personal injury and a court has **not** specifically identified the payment as being to cover the cost of providing care, that capital is disregarded for a period of up to 52 weeks from the date of receipt of the first payment. If the money is placed in a disregarded location such as a personal injury trust or is administered by a court the relevant disregards will apply. Subsequent payments outside the 52 weeks are taken fully into account unless they are placed into a disregarded location.

10.027 Where the capital consists of any payment made in consequence of personal injury and a court **has** specifically identified the payment as being to cover the cost of providing care, that capital is taken into account. However, if the money is placed in a disregarded location such as a personal injury trust or is administered by a court the relevant disregards will apply.

Regulation 21(2) and Schedule 4 paragraph 10A

Treatment of income

10.028 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 in consequence of personal injury, or from funds derived from 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.

Regulation 15(2) and Schedule 3 paragraph 10

(The agreements mentioned above include out-of-court settlements.)

SECTION 11 – THIRD PARTY PAYMENTS AND TOP-UPS

What are payments made by a third party and top-up payments

- 11.001 Third party payments can be made for a number of reasons e.g.
- payments made by a third party to help clear arrears of fees
 - payments made by a third party where the resident has chosen to move into a care home that is more expensive than the local authority would expect to pay having regard to the residents assessed needs. i.e. a top-up
 - top-up payments made by the resident (allowable only in specific circumstances) where the resident has chosen to move into a care home that is more expensive than the local authority would expect to pay having regard to the residents assessed needs i.e. the resident makes their own top up.
- 11.002 Except in circumstances set out in 11.011, a resident cannot use their own resources to pay for more expensive accommodation i.e. cannot act as their own third party and make a top up.
- 11.003 A third party could be a family member, friend or other person.
- 11.004 Third party top-ups, where available, are intended to allow residents some greater freedom in choosing the care home in which they wish to live.
- 11.005 Top Up payments made by a third party will be owned by the resident and should be treated as income in the financial assessment. (see 11.010 below) **Regulation 17(4)**
- 11.006 If the third party is making a top up payment direct to the LA, by agreement, the amount of the payment should be treated as notional income of the resident to ensure that the payment is taken into account in the assessment. **Regulation 17(4)**

Third party payments to clear arrears

- 11.007 Payments made by a third party to the resident to help clear arrears of charges for residential accommodation will be treated as capital in the normal way (if these payments are made directly to the LA they are not treated as belonging to the resident,). See 11.008 **Regulation 22(8)**
- 11.008 Where a third party makes a payment directly to the LA 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, 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 LA. **Regulation 17(5)**

Third party top up's to meet higher fees

- 11.009 Circular LAC(2004)20 provides revised guidance on the associated National Assistance Act 1948 (Choice of Accommodation) Directions 1992, which is intended to ensure that when councils with social services responsibilities make placements in care homes or care homes with nursing, that, within reason, individuals are able to exercise genuine choice over where they live.
- 11.010 It is advisable to carefully study the guidance in Circular LAC(2004)20 but the following are the main points relating to the charging process:
- Councils must contract to pay the full cost of the accommodation, including the top up.
 - The third party's contribution will be treated as part of the residents income for charging purposes and the council will be able to recover it in that way.

- The third party can, by agreement with all parties, pay the top up direct to the accommodation on behalf of the resident but even where there is such an agreement the council continues to be liable to pay the full costs of the accommodation should either the resident or the third party fail to pay the required amount.
- The resident will be required to demonstrate that either they or the third party is able and willing to pay the difference between the council's usual rate and the accommodations actual fees.
- Residents and third parties should clearly be made to understand from the outset that there cannot be any guarantee that any increases in the accommodations fees will automatically be shared evenly between the council and/or the resident or third party; that an increase in the residents income will not necessarily lessen the need for a top up as the residents income will be subject to the financial assessment in the normal way; that failure to keep up top-up payments may result in the resident having to move to other accommodation unless, after an assessment of need, it is shown that assessed needs can only be met in the current accommodation.

Third party top ups made by the resident

11.011 From 24 October 2001, a resident may top-up from his own resources as listed below only if they and the LA have made a deferred payments agreement or the resident is subject to the 12-weeks property disregard.

Residents subject to the 12-weeks property disregard may top-up from :

- Earnings disregarded under the regulations.
- Income disregarded under the regulations.
- Capital disregarded under the regulations (with the exception of the value of the resident's home that is subject to the 12-weeks property disregard).
- Other capital resources, excluding their home, with the provisos that :
- people can only top-up to the value of the lower capital limit;
- where these resources are used to top-up by residents who have resources above the lower capital limit, 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.

Residents who have a deferred payments agreement may top-up from :

- Earnings disregarded by CRAG.
- Income disregarded by CRAG.
- Capital disregarded by CRAG.
- Other capital resources, including the value of the property that is subject to the deferred payments agreement, with the proviso that the resident must be left with total capital resources under the means-test to the value of the lower capital limit and that where the value of the property is used as "collateral" for top-ups, the amount of the top-up is added to the resident's deferred contributions. (This amount is eventually repaid when the home is sold.)

11.012 Where a resident is making top-up payments in the circumstances described in 11.011, and where the value of the top-up is not added to the deferred contribution because it is not made from the value of the resident's property, the top-up must be treated as part of the resident's income. **Regulation 16A**

Examples

A resident who has accessed the 12-weeks property disregard has a house valued at £200,000, other capital resources worth £15,250, and income of £150. He chooses to enter a residential care home where the actual cost is £400, while the council's usual cost for someone with his assessed need is £300. The council agrees to the placement, and the resident contributes income of £150 minus the personal expenses allowance, plus a tariff income of £4 per week to the costs of care. The council makes up the difference between its usual cost and the income contributed by the resident. The resident agrees to make a top-up of £100 (the difference between the actual cost and the council's usual cost). This reduces the resident's capital resources (excluding the value of the home) by £1,200 over the 12 weeks. Despite the fact that

the resident's capital resources fall because of the topping-up, the tariff income remains at the level of £4 per week.

A relatively young resident is subject to a deferred payments agreement. She has a property worth £30,000, other capital resources of £10,000 and income of £150 per week. The resident wishes to enter a residential care home where the actual cost is £400 per week, compared with the council's usual cost for someone with her needs of £300 per week. The council considers whether to agree to the placement and/or a deferred payments agreement in these circumstances. It knows that the resident must be left with capital resources to the value of £14,250 (the lower capital limit). Taking into account the deferred contributions that must be repaid from the sale of the house, the council calculates that this resident would spend her capital resources (that is, £30,000 for the house and plus £10,000 for the other capital resources) to the lower capital limit in approximately 2 years or so. As a result, the council advises the resident to consider a less expensive home, as it feels the resident would not be able to sustain her top-up contributions for the likely length of time she will spend in residential care.

Regs 16A and 28

Reg. 4 National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources (Amendment) (England) Regulations 2001

SECTION 12 STUDENTS

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

Grant Income

Sources of grant income

12.002 A student may receive a grant from a number of different sources, but the majority will receive a **statutory** award. This will be calculated in England and Wales by the Local Education Authority (LEA) and in Scotland by the Scottish Education Department (SED), according to the provisions in force at the start of the academic year. In both cases, the grant is likely to include amounts for various specific purposes, such as tuition fees, examination fees, personal maintenance (i.e. the standard maintenance grant), travelling expenses. A student who receives a **discretionary** grant may have that grant assessed on a different basis. Care should be taken in establishing the details of the grant, in particular whether the grant is payable for the period of study since in many cases this will not be the case.

Period over which grant should be taken into account

12.003 The notice of grant award will show what period the grant is payable for. If not the LA should ask the LEA or SED for details.

- a. Where the grant is payable for the period of study, the amount to be taken into account should be divided equally over the number of weeks in the period of study.
- b. 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.

Regulation 36(2)

Note Grants which are awarded under the Education (Mandatory Awards) Regulations **will** include grant payment for the Christmas and Easter vacations. However, **discretionary** grants, where awarded, may not include payment for those vacations.

Assessed contribution

12.004 The LEA or SED may decide that the student's parent, spouse or civil partner should make a contribution to the grant. Such a contribution would be assessed on the basis of the income of the parent or spouse and the actual grant payable will be reduced by the amount of assessed contribution.

Regulation 35

Amount of grant income

12.005 The amount of grant income to be taken into account should be the amount of standard maintenance grant included in the grant. The standard maintenance grant is specified in Schedule 2 to the Education (Mandatory Awards) Regulations 1987 and the figure should be obtained from the LEA each year. Any other part of the grant should be ignored.

Regulation 36(1)

12.006 Any assessed contribution from the resident's parents, spouse or civil partner, whether or not it is actually paid (including any paid by deed of covenant), should be added to the grant and taken into account up to the level of the standard maintenance grant.

Regulation 35

Covenant income where there is no grant income

Meaning of covenant income

12.007 Covenant income is the income, net of tax at the basic rate, payable to the student under a deed of covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award.

Regulation 35

Deed of covenant

12.008 A deed of covenant is an agreement in writing between a covenantor (donor) and a covenantee (recipient) that a certain sum or sums from the former's income will be paid to the latter while certain conditions exist. A covenant enables the covenantee to reclaim in whole or part tax deducted by the covenantor from his payments.

Amount to be taken into account

12.009 The amount of covenant income to be taken into account is equivalent to the amount of standard maintenance grant which would have been paid, had a maintenance grant been payable. Ask the LEA to provide details of the relevant standard maintenance grant in a case such as the resident's. ***Regulation 37(1)***

12.010 Any amount of covenant income above the figure of the standard maintenance grant should be ignored. ***Regulation 37(1)***

Disregards

12.011 No part of the grant or covenant income should be disregarded as a charitable or voluntary payment (paragraph 8.058 et seq.). ***Regulation 38***

Student loans

12.012 Student loans are administered by the Student Loans Company Ltd., and are paid out of money made available by the Secretary of State for Education.

Eligibility for student loans

12.013 Loans are generally available to full-time students on higher education courses lasting at least one academic year which are

1. **below** postgraduate level (with the exception of the Post Graduate Certificate in Education) **but above**
 - 1.a. Advanced level
 - 1.b. Scottish Higher level
 - 1.c. BTEC or ScotVEC national diploma.

Maximum student loans

12.014 The amount for which the student is eligible is always the maximum according to his circumstances. If the student has taken none, or only part, of the loan this will be by his own choice. If the student is eligible for a loan (see 12.013 above) it will be taken into account whether or not the student has taken the loan. ***Regulation 39***

12.015 The maximum amount of student loan will depend on

1. where the student is studying (London or elsewhere)
2. whether the student has reached the final year of the course

The maximum student loan can be found by asking the LEA or SED or by contacting the Student Loan Company Ltd. 100 Bothwell Street, Glasgow G2 7JD.

Calculation of weekly income from student loans

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

1. if the student is in the final academic year of the course, or if the course is only of one year's duration - by the number of weeks between the start of the academic year (1 January, 1 April or 1 September as appropriate) and the last day of the course.
2. in any other case - by 52 or 53 depending on the number of weeks in the academic year (the 12 months from 1 January, 1 April or 1 September) for which the loan is payable. **Regulation 39**

Amount to be disregarded

12.017 Up to £10 of the weekly income from a student loan should be disregarded. **Regulation 39**

Access funds

12.018 Access funds provided by the Secretary of State for Education are intended for the relief of hardship, where a student might be prevented by financial considerations from starting or completing a course. The funds are administered by the educational institutions, such as colleges and polytechnics, and payments are made by lump sum, regular weekly cash payments, or by payment in kind. Payments can be made to third parties.

Treatment of payments

12.019 Payments made at regular intervals should be treated as a voluntary payment and be subjected to disregard. **Regulation 40(1)**

12.020 Payments paid, or due to be paid, at irregular intervals should be treated as capital. **Regulation 40(2)**

SOCIAL SECURITY BENEFIT RATES

(Weekly rates unless otherwise shown)

**RATES
2010****RATES
2011****RATES OF PERSONAL EXPENSES ALLOWANCE**

Standard PEA for all supported residents.

22.30

22.60**RATES OF BENEFIT****ATTENDANCE ALLOWANCE**

higher rate

71.40

73.60

lower rate

47.80

49.30**DISABILITY LIVING ALLOWANCE****Care Component**

Highest

71.40

73.60

Middle

47.80

49.30

Lowest

18.95

19.55**Mobility Component**

Higher

49.85

51.40

Lower

18.95

19.55**CARER'S ALLOWANCE**

53.90

55.55**EARNINGS RULES**

Therapeutic earnings limit

93.00

95.00**INCAPACITY BENEFIT**

Long-term Incapacity Benefit

91.40

94.25

Short-term Incapacity Benefit (under pension age)

Lower rate

68.95

71.10

Higher rate

81.60

84.15

Short-term Incapacity Benefit (over pension age)

Lower rate

87.75

90.45

Higher rate

91.40

94.25

Increase of Long-term Incapacity Benefit for age

Higher rate

15.00

13.80

Lower rate

5.80

5.60

Invalidity Allowance (Transitional)

Higher rate

15.00

13.80

Middle rate

8.40

7.10

Lower rate

5.45

5.60

INCOME SUPPORT

Personal Allowances

18 to 24	51.85	53.45
25 or over	65.45	67.50

Premiums

Pensioner

Couple Pensioner	99.65	103.75
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Disability

Single 28.00 28.85

Couple 39.85 41.10

Allowances for personal expenses for claimants in

Private and voluntary residential

Care and nursing homes

Personal expenses 22.30 22.60

Capital

Upper limit 16,000.00 16,000.00

Amount disregarded 6,000.00 6,000.00

Child's limit 3,000.00 3,000.00

Amt disregarded of RC/NH 10,000.00 10,000.00

Deemed income

£1 for every complete £250 or part thereof between amount of capital disregarded and capital upper limit

Subtenants

Income from subtenant disregard 20.00 20.00

Statutory Adoption Pay		
Earnings threshold	97.00	102.00
Rate	124.88	128.73
Statutory Maternity Pay		
Earnings threshold	97.00	102.00
Standard rate	124.88	128.73
Statutory Paternity Pay		
Earnings threshold	97.00	102.00
Rate	124.88	128.73
State Pension		
Category A or B	97.65	102.15
Category B(lower) - husband's insurance	58.50	61.20
Category C or D - non-contributory	58.50	61.20
Category C(lower) – non-contributory	35.00	36.60
Additional pension	Increase by 0.00%	3.10%
Increase of Long-term Incapacity Benefit of age (over pension age)		
Higher rate	18.65	19.25
Lower rate	9.35	9.65
Invalidity Allowance (Transitional) (over pension age)		
Higher rate	18.65	19.25
Middle rate	12.00	12.40
Lower rate	6.00	6.20
SEVERE DISABLEMENT ALLOWANCE		
Basic rate	59.45	62.95
Age-related addition (from Dec 90)		
Higher rate	15.00	13.80
Middle rate	8.40	7.10
Lower rate	5.45	5.60

PENSION CREDIT

	April 2010	April 2011
Standard minimum guarantee		
Single	132.60	137.35
Couple	202.40	209.70
Additional amount for severe disability		
Single	53.65	55.30
Couple (one qualifies)	53.65	55.30
Couple (both qualify)	107.30	110.60
Additional amount for carers	30.05	31.00
Savings Credit threshold		
Single	98.40	103.15
Couple	157.25	164.55
Capital		
Amount disregarded –care homes	10,000	10,000
Deemed income		
£1 for each complete £500 or part thereof in excess of the above amounts		
Housing costs		
Deductions for non dependants		
-aged 18 or over, not in work or in work		
And in receipt of Pension Credit	7.40	9.40
-aged 18 or over and in work:		
-gross income: less than £122	7.40	9.40
-gross income: £122 to £179.99	17.00	21.55
-gross income: £180 to £233.99	23.35	29.60
-gross income: £234 to £309.99	38.20	48.45
-gross income: £310 to £386.99	43.50	55.20
-gross income: £387 and above	47.75	60.60
Amount for claimant and first spouse in a polygamous marriage or civil partnership	202.40	209.70
Additional amount for additional spouse or civil partner	69.80	72.35
Disregards		
Standard earnings	5.00	5.00
Couple earnings	10.00	10.00
Higher earnings	20.00	20.00
War disablement pension and War widows pension	10.00	10.00
Armed Forces Compensation Scheme	10.00	10.00
Widowed Parent's Allowance	15.00	15.00
Income from subtenants	20.00	20.00
Income from boarders (disregard the fixed £20)	20.00	20.00
Plus 50% of the balance of the charge		
Deductions for direct payments arrears of housing, fuel, water costs council tax and fines default.	3.30	3.40

Arrears of Community Charge court order against claimant	3.30	3.40
Court order against couple	5.15	5.30
Maximum rates recovery of overpayments		
-ordinary overpayments	9.90	10.20
-where claimant convicted of fraud	13.20	13.60

Tariff income from Capital**Capital held between these amounts****Tariff income to be taken into account**

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

Value of National Savings Certificates

Issue Number	Unit Price	Year of Issue	01/07/98	01/07/99	01/07/00	01/07/01	01/08/02
1 st	15s.6d.	1916-1922	4.61	4.66	4.71	4.76	4.82
2 nd	16s.	1922-1923	4.54	4.59	4.64	4.69	4.74
3 rd	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
4 th	16s.	1932-1933	3.33	3.37	3.41	3.45	3.49
5 th	16s.	1933-1935	3.21	3.25	3.29	3.34	3.38
6 th	15s.	1935-1939	3.17	3.23	3.27	3.33	3.37
7 th	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
8 th	10s.	1947-1951	3.56	3.68	3.68	3.88	3.97
9 th	15s.	1951-1956	4.63	4.79	4.79	5.05	5.17
10 th	15s.	1956-1963	3.95	4.09	4.09	4.32	4.40
11 th	£1	1963-1966	5.15	5.32	5.32	5.63	5.73
12 th	£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
14 th	£1	1974-1976	3.65	3.77	3.88	3.99	4.06
14 th	£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
16 th	£5	1976-1977	19.08	19.68	20.18	20.78	21.17
18 th	£10	1979-1980	29.13	30.10	30.84	31.77	32.40
19 th	£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
21 st	£10	1981	25.86	26.71	27.37	28.20	28.76
23 rd	£25	1981-1982	67.47	69.62	71.40	73.54	74.91
24 th	£25	1982	59.75	61.75	63.25	65.16	66.44
25 th	£25	1982-1983	53.62	55.33	56.75	58.47	59.62
26 th	£25	1983-1984	54.12	55.85	57.28	58.99	60.09
27 th	£25	1984	50.48	52.12	53.45	55.07	56.15
28 th	£25	1984	54.66	56.41	57.85	59.58	60.70
29 th	£25	1984-1985	50.99	52.67	53.98	55.61	56.70
3 rd index-linked issue	£25	1985-1986	50.38	51.43	53.22	54.41	55.94
30 th	£25	1985	51.69	53.34	54.70	56.33	57.38
31 st	£25	1986	46.50	48.03	49.22	50.71	51.71
4 th index-linked issue	£25	1966-1990	39.95	40.79	42.20	43.16	44.15
32 nd	£25	1986-1987	47.83	49.35	50.61	52.12	53.10
33 rd re-investment	£25	1987-1988	41.36	42.75	43.79	45.12	46.23
34 th re-investment	£25	1988-1990	39.80	41.07	42.12	43.38	44.19
35 th re-investment		1990-1991	42.54	43.90	45.02	46.36	47.23
5 th index-linked issue reinvestment	£25	1990-1992	36.14	36.72	37.81	38.47	39.16

36th

36 th re-investment	£25	1991-1992	38.91	40.19	41.19	42.44	43.28
37 th issue re-investment	£25	1992	37.71	38.95	39.92	41.14	41.95
37 th issue re-investment	£25	1992	37.71	38.95	39.92	41.14	41.95
38 th issue re-investment	£25	1992	36.83	38.01	38.99	40.15	40.91
38 th issue re-investment	£25	1992	36.52	37.75	38.67	39.85	40.83
39 th issue re-investment	£100	1992	141.06	145.71	149.34	153.87	156.89
39 th issue re-investment	£100	1992	141.06	145.71	149.34	153.87	156.89
40 th issue re-investment	£25	1992-1993	31.85	33.54	34.39	35.41	36.08
6 th index-linked issue	£25	1992-1993	31.85	34.01	35.02	35.64	36.28
6 th index-linked re-investment	£25	1992-1993	32.52	34.01	35.02	35.64	36.28
41 st issue re-investment	£25	1993-1994	29.78	31.95	33.17	34.16	34.80
7 th index-linked issue	£25	1993-1994	30.52	32.67	34.12	34.72	35.34
42 nd issue re-investment	£100	1994 - date	110.28	116.70	125.11	133.85	137.14
8 th 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
43 rd issue re-investment	£100	1996 - date	104.83	109.41	115.20	122.77	130.78
9 th 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
44 th issue re-investment	£100	1997 - date	100.94	104.83	109.41	115.20	125.10
10 th 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
11 th 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
45 th issue re-investment	£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
12 th 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
46 th issue re-investment	£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
13 th 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
47 th issue	£100	1998 - date			105.54	109.63	114.13

re-investment	£100	1998 – date	105.54	109.63	114.13
14 th index-linked issue	£100	1998 – date	105.07	108.36	112.58
48 th issue	£100	1998 – date	104.05	107.51	111.22
re-investment	£100	1998 – date	104.05	107.51	111.22
15 th index-linked issue	£100	1998 – date	105.04	106.44	109.89
49 th issue	£100	1998 – date	103.80	107.04	110.50
re-investment	£100	1999 – date	103.80	107.04	110.50
50 th issue	£100	1999 – date	104.05	106.61	110.23
re-investment	£100	1999 – date	104.05	106.61	110.23
51 st issue	£100	1999 – date	103.30	105.93	110.55
re-investment	£100	1999 – date	103.30	105.93	110.55
52 nd issue	£100	1999 – date	100.00	105.36	110.20
re-investment	£100	1999 – date	102.63	104.36	110.20
53 rd issues	£100	1999 – date	100.00	104.94	110.33
re-investment	£100	1999 – 2000	101.95	104.94	110.33
16 th index-linked issue	£100	2000 – date	100.00	105.16	108.74
re-investment	£100	2000 – date	103.58	105.16	108.74
54 th issue	£100	2000 – date	100.00	104.10	108.47
re-investment	£100	2000 – date	101.03	104.10	108.47
17 th index-linked issue	£100	2000 – date	100.00	100.00	105.05
re-investment	£100	2000 – date	100.00	101.57	105.05
55 th issue	£100	2000 – date	100.00	100.00	105.70
re-investment	£100	2000 – date	100.00	101.85	105.70
18 th index-linked issue	£100	2000 – 2001		100.00	104.47
re-investment	£100	2000 – 2001		101.12	104.47
56 th index	£100	2000 – 2001		100.00	128.22
re-investment	£100	2000 – 2001		100.88	128.22
19 th index-linked issue	£100	2000 – 2001		100.00	103.54
re-investment	£100	2000 – 2001		100.61	103.54
57 th issue	£100	2000 – 2001		100.00	103.25
re-investment	£100	2000 – 2001		100.00	103.25
20 th index-linked issue	£100	2001 – date		100.00	100.00
re-investment	£100	2001 – date		100.63	102.20
58 th issue	£100	2001 – date		100.00	103.40
re-investment	£100	2001 – date		100.00	103.40
59 th issue	£100	2001- date			100.00
re- investment	£100	2001- date			102.63
60 th issue	£100	2001- date			100.00
re-investment	£100	2001- date			102.51
61 st issue	£100	2001- date			100.00
re-investment	£100	2001- date			101.60
62 nd issue	£100	2002- date			100.00
re-investment	£100	2002- date			101.45
63 rd issue	£100	Current			100.00
re- investment	£100	Current			101.55
21 st index-linked issue	£100	2001- date			100.00
Re-investment	£100	2001- date			101.65
22 nd index-linked issue	£100	2002-date			100.00
re-investment	£100	2002-date			102.00
23 rd 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.

**Health and Social Services
and Social Security Adjudications Act 1983 (HASSASSA)**

General

1. Three Sections of this Act are relevant to the charging procedures for residential accommodation in England and Wales:
 - Section 21
 - Section 22
 - Section 24

Section 21

2. This Section applies where a resident has transferred an asset to a third party with the intention of reducing his liability for charges. It provides that the third party shall be liable for the difference between the amount assessed as due to be paid by the resident and the amount which the LA receive from him for his accommodation.

Deprivation of assets

- 2.1 In order for Section 21 to apply, the LA must have decided that the resident has transferred an asset to someone else **with the intention of** avoiding charges for accommodation. The transfer must have taken place no more than six months before admission to residential accommodation (or six months before resuming occupation in the case of a resident who has been absent from such accommodation). Also, the resident must either have received no consideration for the transfer or any consideration must have been less than the value of the asset.

The six months before residing in **Part 3** accommodation rule for disposing of assets can only be applied from the date a local authority has assessed a person as needing residential care under the **Part 3** of the National Assistance Act, **and** has arranged a placement in a local authority home or independent sector home. The six month rule does not apply where a resident is self funding in an independent sector home, has not been assessed, nor had their placement arranged by a local authority.

Examples

A resident transferred his house to his daughter with the intention of avoiding a charge for accommodation and the daughter gave the father nothing in return. The HASSASSA powers can be used to make the daughter liable for the father's charges.

A resident sold his right to receive an income of £5000 a year for a single payment of £200 with the intention of avoiding or reducing the charge for accommodation. The return for the transfer is less than the value of the asset so the HASSASSA powers can be used.

A resident paid for his own accommodation for 2 years, then gave £20,000 to his daughter in March, and continued to self-fund until December of that year. The resident then approached the LA for support; therefore, the 6 month rule does not apply. Although section 21 of HASSASSA does not apply, in this case the LA does still have recourse to regulation 25(1) of the National Assistance (Assessment of Resources) Regulations 1992. (see section 6.057)

Assets to be considered

- 2.2 The LA **can** only consider using these powers if the asset disposed of is one which would have been taken into account for the purposes of assessing the charge.
- 2.3 The value of any asset, other than cash, shall be the amount which would have been realised had the asset been sold at the time of transfer on the open market by a willing seller. The value should take into account any debts secured on the asset and a reasonable amount in respect of the expenses of sale (10% as in the Assessment Regulations, see 6.011).

Transfer of liability

- 2.4 The amount for which the person who has received the asset should be held liable should be restricted to the benefit accruing to him from the transfer.

For example

A resident transferred his former home, valued at £65 000, to his son with the intention of avoiding a charge for accommodation. After the expenses of sale and the clearing of a debt secured on the property the value of the property is assessed as £40000. The son can be held liable for charges up to a total of £40 000.

- 2.5 If the asset has been transferred to more than one person, each person can be held liable for charges only up to the value of his share of the asset.
- 2.6 The amount of liability to be transferred to the third party should be the difference between the charge assessed including notional income or capital derived from the transferred asset and the amount actually being paid by the resident.

Section 22

3. This Section applies where a resident fails to pay an assessed charge for accommodation and has a beneficial interest in land.
- 3A. It is this Department's view that because a specific power to create a charge is contained in the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983, the general powers contained in section 111 of the Local Government Act 1972 cannot be used. Interest cannot be charged during the resident's lifetime on a debt which is covered by the creation of a charge on property under section 22 of HASSASSA. HASSASSA requires interest to be charged from the day after the resident's death.

Placing a charge on land

- 3.1 If a resident fails to pay a sum assessed as being due to be paid for accommodation and has a beneficial interest in land in England or Wales, the LA can create a charge in their favour on his interest, or on the proceeds of the sale of land held upon trust for sale. If a resident has more than one piece of land the LA can decide which piece to place a charge on.
- 3.2 The charge placed on the property can be changed from time to time as the amount of assessed charges outstanding changes.
- 3.3 A charge is created by the LA declaring in writing that the charge is being created.
- 3.4 If the LA is considering placing a charge on a resident's interest in land, the resident should be advised to or assisted to consult a solicitor about this procedure.
- 3.5 It is the Department's view that where one person owns land then his interest is in the land itself and a charge can be registered against that interest under section 22 of HASSASSA. However where more than one person owns the same piece of land then their interest is technically in the proceeds of sale of that land and not in the land itself. In this case, section 22(8) of HASSASSA has the effect of preventing the registration of an interest in the proceeds of sale of land. It would seem that registering a caution (which affords less protection than a registered charge) is

the best step an authority can take in such circumstances. (refer to 7.012 and 7.014 on jointly-owned)

Section 24

4. This Section applies where a resident, on whose interest in a property a charge has been placed, dies.

Charging interest

- 4.1 Where the LA has placed a charge on property, they should charge interest on the sum, at a reasonable rate, from the day after the resident for whom they have provided accommodation dies to the date on which the debt is paid.

Example

A resident owned a property valued at £60 000; he refused to sell that property and, as a result, was unable to pay the £200 per week which was the standard charge. He was in the accommodation for 20 weeks and the LA placed a charge for £4000 on the property. The resident died on 01/11/93. The LA charges interest on the £4000 from 02/11/93 to the date on which the property is sold and the debt is paid.

PAYMENT OF ATTENDANCE ALLOWANCE (AA)/DISABILITY LIVING ALLOWANCE CARE COMPONENT (DLA (Care component))

AA/DLA (Care component) may be paid to residents on the following basis from admission to residential care:

TYPE OF RESIDENT	EFFECT ON AA/DLA(Care Component)
Residents in accommodation owned or managed by a local authority or independent sector accommodation where the local authority helps with the fees.	Payable for the first 28 days (if the person was already entitled to AA/DLA (Care) before admission to residential accommodation).
Residents in local authority or independent sector accommodation who do not get help with fees from a local authority even if they are entitled to Income Support, Housing Benefit, income based Jobseekers Allowance or Pension Credit.	Continues to be payable for as long as they meet 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 from the thirteenth week or earlier if the property is sold.	Continues to be payable for the first 28 days and will re-commence from the thirteenth week or when self-funding status re-commences.
Residents in local authority or independent sector accommodation who are temporarily receiving help with the fees while a capital asset is being realised and/or have a Deferred Payments Agreement and where the local authority will be reimbursed their costs.	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 (Care component).

Note:

Residents who are self-funding, who have not previously claimed AA/DLA and who make a successful claim will be able to continue to receive it while they remain self-funders. Councils may wish to advise and/or assist new residents to make claims and advise self-funding residents of the changes whereby receipt of Income Support, income based Jobseekers Allowance or Pension Credit will no longer affect their entitlement to AA/DLA (Care component).

The withdrawal of AA/DLA (Care component) 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 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, it can be claimed for those periods.

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 2003¹

Type of Accommodation	Period in Hospital	Income Support/Pension Credit	Retirement Pension
All residents in local authority residential care homes and independent sector residential care and nursing homes.	Immediately on admission	No change to benefit immediately on admission	No change to benefit immediately on admission
	After 52 weeks ^{2/3}	Since 10 April 2006 ("A" day) benefit is no longer reduced to the hospital personal allowance.	Since 10 April 2006 benefit is no longer be 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

1. The changes were introduced with effect from 10 April 2006. This means that residents whose benefit was downrated after 52 weeks under the previous rules had their benefit reinstated from the payday on or after 10 April 2006.
2. 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
3. The 28 day linking rules was also abolished from 10 April 2006.
4. AA and DLA (Care component) continues to be withdrawn after 4 weeks in hospital, which will have an impact on self-funders and full fee payers.

LEGISLATION FOR PAYMENTS OF WAR WIDOWS AND WIDOWERS 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 Forces 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 Forces Act 1980.
- f) article 29(1A) of the Naval, Military and Air Forces 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 19th December 1881
- i) the Royal Warrant of 27 October 1884
- j) the dispensing Order by His Majesty of 14 January 1922

THE TREATMENT OF COUPLES IN CLAIMS FOR INCOME SUPPORT/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/Pension Credit. The treatment of a couple for Income Support/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 spouse or civil 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/Pension Credit purposes, and the whole amount of Income Support/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 married couple temporarily in residential accommodation

Where only one member of a married couple or civil partnership is temporarily in a residential care home, and the couple are entitled to Pension Credit, the Pension Credit will be paid at the normal appropriate minimum guarantee for the couple as if they were both still at home.

Where one partner is temporarily in a residential care home, and the couple are 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 normal applicable amount for the partner remaining at home **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 in different residential homes or the same residential home Income Support/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/Pension Credit will be paid as if he were a single person. No account will be taken, in the Income Support/Pension Credit assessment, of the resources of the partner remaining at home although, for those under 60 years, the Jobcentre Plus may look to the partner at home to make a contribution as a liable relative.

Both partners in the same residential accommodation

Where both partners are admitted to the same residential care or nursing home, the Job Centre Plus/Pension Service Decision Maker will have decided whether to assess them as a couple or separately.

A married couple, civil partnership or unmarried couple who live in the same household are treated as one unit for Income Support/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/Pension Credit purposes is whether they live in the same household. A married couple or civil partners 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 the Jobcentre Plus/the Pension Service Adjudication Officer has decided to aggregate the couple's resources Income Support/Pension Credit will be paid to one member of the couple taking into account the needs of both members.

PENSION CREDIT (for information only)

Pension Credit is an income-related benefit for people who have reached the minimum qualifying age who live in Great Britain that tops up their income, to a guaranteed level of £137.35 per week for a single person (£209.70 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 increasing from 60 to 65 alongside the increase in women's State pension age. To find out when you can get Pension Credit, visit our website www.direct.gov.uk/pensioncredit.

The State Pension age for both men and women will rise in the future. The Government has announced new proposals for increasing state Pension Age to 66 by 2020, which will mean that women's State Pension age will increase more quickly to 65 between April 2016 and November 2018.

Changes to the State Pension age are likely to affect Pension Credit qualifying age.

People aged 65 and over can also be rewarded for some of their savings and income they have for their retirement. It gives pensioners a cash addition of 60p for every £1 of income they have above the savings credit threshold (£103.15 for a single person and £164.55 for a couple) up to a maximum of £20.52 week (£27.09 a week for couples).

After this, the maximum reward is reduced by 40p for every £1 of income above the income guarantee so that pensioners with incomes up to around £188.00 a week (£277.00 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 values given in this Annex reflect the increase in Pension Credit from 11 April 2011.

For further details about Pension Credit, contact the Pensions Disability and Carers Service on 0845 606 0265.

For further details on the savings disregard please refer to paragraph 8.024 above and to the document *Pension Credit and the Savings Disregard* on www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/FinanceAndPlanning/ResidentialCare/fs/en.

THE QUALIFYING AGE FOR THE £20 DISREGARD

The qualifying age for the £20 disregard is increasing from 60 to 66 between 6th April 2010 and 5th April 2020 alongside the increase in women's State Pension age. The state pension age for women and will rise as follows:

	<u>State pension age reached</u>
Born 6 th April to 5 th May 1950	6 th May 2010
Born 6 th May to 5 th June 1950	6 th July 2010
Born 6 th June to 5 th July 1950	6 th September 2010
Born 6 th July to 5 th August 1950	6 th November 2010
Born 6 th August to 5 th September 1950	6 th January 2011
Born 6 th September to 5 th October 1950	6 th March 2011
Born 6 th October to 5 th November 1950	6 th May 2011
Born 6 th November to 5 th December 1950	6 th July 2011
Born 6 th December 1950 to 5 th January 1951	6 th September 2011
Born 6 th January to 5 th February 1951	6 th November 2011
Born 6 th February to 5 th March 1951	6 th January 2012
Born 6 th March to 5 th April 1951	6 th March 2012
Born 6 th April to 5 th May 1951	6 th May 2012
Born 6 th May to 5 th June 1951	6 th July 2012
Born 6 th June to 5 th July 1951	6 th September 2012
Born 6 th July to 5 th August 1951	6 th November 2012
Born 6 th August to 5 th September 1951	6 th January 2013
Born 6 th September to 5 th October 1951	6 th March 2013
Born 6 th October to 5 th November 1951	6 th May 2013
Born 6 th November to 5 th December 1951	6 th July 2013
Born 6 th December 1951 to 5 th January 1952	6 th September 2013
Born 6 th January to 5 th February 1952	6 th November 2013
Born 6 th February to 5 th March 1952	6 th January 2014
Born 6 th March to 5 th April 1952	6 th March 2014
Born 6 th April to 5 th May 1952	6 th May 2014
Born 6 th May to 5 th June 1952	6 th July 2014
Born 6 th June to 5 th July 1952	6 th September 2014
Born 6 th July to 5 th August 1952	6 th November 2014
Born 6 th August to 5 th September 1952	6 th January 2015
Born 6 th September to 5 th October 1952	6 th March 2015
Born 6 th October to 5 th November 1952	6 th May 2015
Born 6 th November to 5 th December 1952	6 th July 2015
Born 6 th December 1952 to 5 th January 1953	6 th September 2015
Born 6 th January to 5 th February 1953	6 th November 2015
Born 6 th February to 5 th March 1953	6 th January 2016
Born 6 th March to 5 th April 1953	6 th March 2016
Born 6 th April to 5 th May 1953	6 th July 2016
Born 6 th May to 5 th June 1953	6 th November 2016
Born 6 th June to 5 th July 1953	6 th March 2017
Born 6 th July to 5 th August 1953	6 th July 2017
Born 6 th August to 5 th September 1953	6 th November 2017
Born 6 th September to 5 th October 1953	6 th March 2018
Born 6 th October to 5 th November 1953	6 th July 2018
Born 6 th November to 5 th December 1953	6 th November 2018
Born 6 th December 1953 to 5 th January 1954	6 th March 2019
Born 6 th January to 5 th February 1954	6 th July 2019
Born 6 th February to 5 th March 1954	6 th November 2019
Born 6 th March to 5 th April 1954	6 th March 2020
Born 6 th April 1954 to 5 th April 1968	Age 66

CIRCULARS

CIRCULAR	SUMMARY
LAC(92)19	<p>CHARGES FOR RESIDENTIAL ACCOMMODATION</p> <p>This circular contains guidance on the procedures for charging adults placed by local authorities in residential accommodation, including nursing homes, from April 1993. It is being issued together with the Charging for Residential Accommodation Guide and the National Assistance (Assessment of Resources) Regulations 1992. It also contains the commencement order for sections 21, 22, 23 and 24 of the Health and Social Services and Social Security Adjudications Act 1983</p>
LAC(93)7	<p>ORDINARY RESIDENCE</p> <p>This circular contains guidance on the identification of the ordinary residence of people who require personal social services under the National assistance Act 1948. The guidance is applicable not only to local authorities' responsibilities for residential and, from 1 April 1993, nursing home care but also for care in other types of residential accommodation provided under Section 21 (and section 26) of the National assistance Act, for instance hostels and group homes. It also covers welfare services provided under Section 29 of the national assistance Act 1948. Reference is also made to the responsibilities of other authorities, the Children Act 1989, and after care for people who have been detained under the Mental Health Act 1983. It does <u>not</u> apply to the provision of residential accommodation or other services in respect of people aged under 18 as such services cannot be provided under the national assistance Act.</p> <p>The purpose of the circular is to clarify where possible where responsibility lies between social services authorities, so that scope for disputes is reduced. Authorities should note in particular that the provision of services for individuals requiring social services should not be delayed because of uncertainty about which authority is responsible, and that when an individual does not appear to have any settled residence, it is the responsibility of the authority of the moment to provide any residential care required to meet their needs. The circular also sets out in Part 2 the procedure for referring to the secretary of State for determination any disputes that cannot be resolved between the local authorities concerned.</p>
LAC(93)14	<p>CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.1</p> <p>This circular contains amendments to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation. The amendments are sidelined on the attached replacement pages of the Charging for Residential Accommodation Guide (CRAG). The circular also outlines arrangements for updating the CRAG and gives advanced notification of proposed changes to Residential Allowance entitlement for residents who are temporarily absent.</p>
LAC(94)1	<p>I CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.2</p> <p>II CHARGES FOR NON-RESIDENTIAL ADULT SERVICES UNDER SECTION 17 OF THE HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS ACT 1983</p> <p>Part I of this circular outlines amendments to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations, together with further guidance to clarify other issues. The amendments are sidelined on the attached replacement pages of the Charging for Residential Accommodation Guide (CRAG). The circular also addresses certain procedural aspects of the charging assessment process. Part II of the circular reminds authorities of their powers to charge for non-residential services for adults.</p>
LAC(94)15	<p>CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.3</p> <p>This circular outlines amendments to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. The amendments are sidelined on the attached replacement pages of the Charging for Residential Accommodation Guide (CRAG).</p>

CIRCULAR

SUMMARY

- LAC(94)21 **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.4**
This circular outlines amendments to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations and introduces some new guidance to the Charging for Residential Accommodation Guide (CRAG). The circular also contains new guidance which is not covered in CRAG. The amendments to CRAG are sidelined on the attached replacement pages.
- LAC(95)7 **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.5**
This circular outlines amendments to the charging assessment rules local authorities in respect of adults placed in residential accommodation, as a consequence of amendments to the Regulations.
Attached is a complete replacement of the Charging for Residential Accommodation Guide (CRAG) which incorporates amendments 1-4 as well as containing sidelined paragraphs which constitute amendment 5. The covering circulars which accompanied the original guidance and amendments 1-4 are reproduced in a new annex H to CRAG. The guidance is issued under section 7(1) of the Local Authority Social Services Act 1970.
- LAC(95)21 **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.6**
This circular outlines an amendment to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of an amendment to the Regulations. It also revises guidance in the Charging for Residential Accommodation Guide (CRAG). The amendments to CRAG are sidelined on the attached replacement pages. This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.
- LAC(96)9 **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.7**
This Circular:
I outlines proposed amendments to be made from 8 April 1996 to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. It also revises guidance in the Charging for Residential Accommodation Guide (CRAG);
II sets out the revised personal expenses allowances from 8 April 1996 for people provided with residential accommodation under Part III of the National Assistance Act 1948.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.
- LAC(96)9
(Addendum) **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.7**
This circular adds information to LAC(96)9 about amendments to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. It also makes minor amendments to the Charging for Residential Accommodation Guide (CRAG) and amends LAC(95)7.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.
- LAC(97)5 **CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.8**
II NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) REGULATIONS 1997
This circular:
I outlines amendments to be made from 7 April 1997 to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. It also revises guidance in the Charging for Residential Accommodation Guide (CRAG);
II sets out the revised personal expenses allowances from 7 April 1997 for people provided with residential accommodation under Part III of the National Assistance Act 1948.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.

CIRCULAR

SUMMARY

LAC(98)8

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.9 II NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) AND (ASSESSMENT OF RESOURCES) REGULATIONS 1998

This circular:

- I outlines amendments to be made from 6 April 1998 to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. It also revises guidance in the Charging for Residential Accommodation Guide (CRAG) and other guidance;
- II sets out the revised personal expenses allowances from 6 April 1998 for people provided with residential accommodation under Part III of the National Assistance Act 1948;
- III provides other guidance on good practice and the Sefton judgement.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.

LAC(98)19

COMMUNITY CARE (RESIDENTIAL ACCOMMODATION) ACT 1998

This circular:

- I explains the meaning of the Community Care (Residential Accommodation) Act 1998;
- II outlines amendments to be made from 11 August to the charging assessment rules local authorities apply in respect of adults placed in residential accommodation as a consequence of amendments to the Regulations. It also revises guidance in the Charging for Residential Accommodation Guide (CRAG), and other guidance;
- III provides further guidance on good practice on the capital limits and assessment of need.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.

LAC99(9)

CHARGES FOR RESIDENTIAL ACCOMMODATION CRAG AMENDMENT NO.10 II NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) REGULATIONS 1999

This circular:

- I makes minor amendments to the Charging for Residential Accommodation Guidance (CRAG);
- II sets out the revised personal expenses allowances from 12 April 1999 for people provided with residential accommodation under Part III of the National Assistance Act 1948;
- III provides a complete replacement of CRAG which incorporates amendments 5-9 as well as containing sidelined paragraphs which constitute amendment 10. The covering circulars which accompanied the original guidance and amendments 5-9 are reproduced in a revised annex H to CRAG.

This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.

CIRCULAR

SUMMARY

LAC(2000)11

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.11 NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) REGULATIONS

This circular:

- I announces the revised personal expenses allowance (PEA) of £15.45 that comes into force on 10 April 2000. It applies to everyone in residential care or nursing homes receiving help from local authorities, under Part III of the National Assistance Act 1948, to meet costs;
- II makes minor amendments to the Charging for Residential Accommodation Guide (CRAG). These concern:
 - Section 117 of the Mental Health Act 1983;
 - Changes to Attendance Allowance and Disability Living Allowance for full payers in local authority homes;
 - Corrections to Annex F of the CRAG.
- III Clarifies certain areas of the existing regulations, namely:
 - Local Authority Circular (98)19;
 - Payment of residents' assessed contributions direct to the home;
 - Local authorities' powers to increase the rate of PEA for residents of working age.

LAC(2001)1

INTERMEDIATE CARE

This HSC/LAC sets out guidance on the development of new intermediate care services to be commissioned by the NHS and councils.

LAC(2001)2

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.12

This circular:

- I announces the following change to the National Assistance (Assessment of Resources) Regulations 1992;
Schedule 4 to the principle regulations has been amended in order that ex-gratia payments of £10,000 made on or after 1st February 2001 by the Secretary of State in consequence of a person's imprisonment or internment by the Japanese during the Second World War shall be disregarded as capital for the purposes of the ascertaining the total capital assets of a resident.

LAC(2001)10

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.13 NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) ENGLAND REGULATIONS 2001 NATIONAL ASSISTANCE ACT (ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £16.05 that comes into force on 9 April 2001. It applies to everyone in residential care or nursing homes receiving help from local authorities, under Part III of the National Assistance Act 1948, to meet costs;
- II revises capital limits from £10,000 (lower) and £16,000 (upper) to £11,500 (lower) and £18,500 (upper) to come into force on 9 April 2001.
- III introduces a new three-months property disregard on permanent entry to residential and nursing care. This will come into force from 9 April 2001.
- IV make amendments to the Charging for Residential Accommodation Guide (CRAG). These concern:
 - a) Increases the higher earnings disregard from £15 to £20 per week. This will come into force from 9 April 2001
 - b) Clarification of mandatory property disregards at 7.003
 - c) Income support capital limit changes
 - d) Updating of DSS benefit rates in annex A of CRAG
 - e) Correction of annex F of CRAG concerning hospital downrating
- V clarifies existing guidance around the treatment of carers.

CIRCULAR

SUMMARY

LAC(2001)11

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.14 NATIONAL ASSISTANCE ACT (ASSESSMENT OF RESOURCES) (AMENDMENT) (NO3) (ENGLAND) REGULATIONS 2001

- 1 This circular announces that the National Assistance (Assessment of Resources) Regulations 1992 have been amended to include provision to ensure that from 12 April 2001 compensation payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease are to be disregarded from the residential care means test.
- 2 The regulations cross-refer to parallel Income Support regulations which will provide a disregard of the lump sum payments made from the trusts any capital derived wholly and exclusively from such payments in the hands of the persons set out below for the following periods:

Victim	Indefinitely
Partner at time of death of victim	Indefinitely
Parent (or guardian)	2 years from the date of death of the victim (or from date of payment from the trust, if later)
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.

LAC(2001)19

THE RESIDENTIAL ACCOMMODATION (RELEVANT PREMISES, ORDINARY RESIDENCE AND EXEMPTIONS)(AMENDMENT)(ENGLAND) REGULATIONS 2001

The Secretary of State has made regulations amending The Residential Accommodation (Relevant Premises, Ordinary Residence and Exemptions) Regulations 1993. The new regulations allow councils to support in their existing residential care or nursing home those people with preserved rights who face eviction but who could hitherto receive such support only in a different care home. They came into force on Friday 1st June. This guidance, which is issued under section (7) 1 of the Local Authority Social Services Act 1970, supplements that set out in LAC (93)6 issued in March 1993. In particular it impacts on the content of paragraphs 16, 23 and 24 of LAC(93)6.

CIRCULAR

SUMMARY

LAC2001(25)

NATIONAL ASSISTANCE ACT (RESIDENTIAL ACCOMMODATION) (DISREGARDING OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001

NATIONAL ASSISTANCE ACT (RESIDENTIAL ACCOMMODATION) (RELEVANT CONTRIBUTIONS) (ENGLAND) REGULATIONS 2001

DETERMINATION UNDER SECTION 93 OF THE LOCAL GOVERNMENT ACT 2000 OF THE DEFERRED PAYMENT GRANT FOR 2001/2002

NATIONAL ASSISTANCE ACT (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS) (ENGLAND) REGULATIONS 2001 (and explanation of consequential amendment to the Choice of Accommodation Directions 1992)

This circular:

- I explains how regulations made under section 53 of the Health and Social Care Act 2001 pave the way for the introduction of deferred payments by councils with social services responsibilities (referred to in this circular as 'councils');
- II introduces deferred payments for residents with property that is taken into account by the means-test for residential accommodation, who do not wish to sell their homes, or cannot do so, in order to meet their care costs. This will come into force from 1 October 2001. Details of the grant made available to councils in support of implementation of deferred payments are given in the Grant Determination attached to this circular at Attachment 1. The certificate of expenditure is given at Attachment 2. Information which councils may wish to use when disseminating information about deferred payments to the public is given in Appendix 1 of the Annex;
- III introduces regulations which enable residents, in certain circumstances, to top up from income and assets disregarded by the means-test so that they may enter residential accommodation that is more expensive than the council would normally fund. The regulations also confirm that third parties may top-up. This will come into force from 1 October 2001;
- IV corrects an error that appeared in the section 6 of the Charging for Residential Accommodation Guide (CRAG) that was issued with LAC(2000)11 concerning ex-gratia payments for former prisoners of war in the Far East;
- V clarifies existing guidance around council action when the assets of former self-funding residents fall to the upper capital limit;
- VI reminds councils of their responsibilities towards the 12-weeks property disregard, which was introduced from 9 April 2001 (see LAC(2001)10).

LAC(2001)29

NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS AND ASSESMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001

This Circular:

- i Informs councils with social services responsibilities (referred to as "councils" in this circular) of the national assistance (Residential Accommodation) (Additional payments and Assessment of Resources Regulations) (Amendment) (England) Regulations 2001. As a result, The Charging for Residential Accommodation Guide (CRAG) is updated to reflect the new regulations.
- ii Reminds councils of the introduction of Free Nursing Care from 1st October 2001.

LAC(2002)7

GUIDANCE TO COUNCILS WITH SOCIAL SERVICES RESPONSIBILITIES ON THE ABOLITION OF PRESERVED RIGHTS

This circular contains statutory guidance for councils with social services responsibilities on the preserved rights transfer. From 8 April 2002 they will have responsibility for making residential accommodation arrangements for people who were in independent sector residential care and nursing homes on 31 March 1993 and who are entitled to income support at preserved rights rates. The guidance, which is issued under section 7(1) of the Local Authority Social Services Act 1970, supersedes that set out in LAC(93)6, issued in March 1993, and that in LAC(2001)19, issued in June 2001.

CIRCULAR

SUMMARY

LAC(2002)11

NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (ENGLAND) REGULATIONS 2002

NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2002

DEFERRED PAYMENTS GRANT FOR 2002/2003: DETERMINATION UNDER SECTION 93 OF THE LOCAL GOVERNMENT ACT 2000

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £16.80 that comes into force on 8 April 2002. It applies to everyone in residential care or nursing homes receiving help to meet costs from councils with social services responsibilities (hereafter referred to as 'councils'), under Part 3 of the National Assistance Act 1948.
- II revises capital limits from £11,500 (lower) and £18,500 (upper) to £11,750 (lower) and £19,000 (upper), to come into force on 8 April 2002. Councils are reminded of the effect on charges for home care.
- III advises councils of the Deferred Payments grant they will receive in 2002/03, reminds them of the purpose of the grant, and asks them to promote take-up. Full details of the grant are given in the Grant Determination attached to this circular at Attachment 1. The audit certificate is given at Attachment 2.
- III reminds councils of their responsibilities under section 42 of the National Assistance Act 1948 with respect to contributions to care costs that may be sought from spouses who are liable to maintain their partners in residential accommodation, and provides guidance.
- V advises councils on the transfer of responsibility for residents with preserved rights to councils.
- VI advises councils on the recent judgement in the case of the Queen (on the application of personal representatives of Christopher Beeson) v Dorset County Council and the Secretary of State for Health.
- VII advises councils of their responsibilities when residents may have to wait for admission to residential accommodation.
- VIII advises councils of the definitions of temporary and permanent care.
- IX advises councils of changes to social security benefit rates from 8 April 2002.
- X advises councils of up-to-date values of National Savings Certificates.
- XI advises councils of the impact of changes to Income Support regulations with respect to war widowers' pensions and special payments.

LAC(2002)15

NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (NO.2) (ENGLAND) REGULATIONS 2002

This circular:

- I announces an amendment to the Assessment of Resources Regulations 1992 with respect to the treatment of arrears of benefits payments and related concessionary payments. This amendment maintains the status quo.
- II announces a further amendment to the Assessment of Resources Regulations 1992 with respect to the treatment of periodical payments paid to residents as a result of personal injury awards.
- III advises councils on the operation of the deferred payments scheme and introduces a draft legal agreement that councils may consider using or adapting when agreeing deferred payments with individual residents.
- IV advises councils of the introduction of statutory paternity pay and statutory adoption pay and how these should be treated within the system for charging for residential care.
- V advises councils on a number of technical changes and updates to the Charging for Residential Accommodation Guide.
- VI advises councils of the recent House of Lords judgement with respect to section 117 aftercare services.

CIRCULAR

SUMMARY

LAC(2003)8

**NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS) (ENGLAND) REGULATIONS 2003
NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2003
DEFERRED PAYMENTS GRANT FOR 2003/4: DETERMINATION UNDER SECTION 93 OF THE LOCAL GOVERNMENT ACT 2000**

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £17.50 that comes into force on 7 April 2003. It applies to everyone in residential care or nursing homes receiving help to meet costs from councils with social services responsibilities (hereafter referred to as 'councils'), under Part 3 of the National Assistance Act 1948. It reminds councils of the purpose of PEA.
- II revises capital limits from £11,750 (lower) and £19,000 (upper) to £12,000 (lower) and £19,500 (upper), to come into force on 7 April 2003. Councils are reminded of the effect on charges for home care.
- III advises councils of how the financial assessment for residential accommodation should treat Supporting People payments from 1 April 2003.
- IV advises councils of a new disregard, from 1 April 2003, of the value of a resident's interest in property occupied by a lone parent estranged/ divorced from the resident.
- V advises councils of how the financial assessment for residential accommodation should treat Working Tax Credit, Child Tax Credit and Guardian's Allowance from 7 April 2003.
- VI advises councils of the Deferred Payments grant they will receive in 2003/04 and reminds them of the purpose of the grant. Full details of the grant are given in the Grant Determination attached to this circular at Attachment 1. The certificate of expenditure is provided at Attachment 2. It should be noted that this Grant Determination only applies to zero, one and two star non-excellent councils.
- VIII advises councils on the recent Court of Appeal judgement in the case of the Queen (on the application of personal representatives of Christopher Beeson) v Dorset County Council and the Secretary of State for Health.
- IX alerts councils to the following benefit changes in October 2003:
 - The introduction of Pension Credit
 - The full abolition of residential allowance and the abolition of the Part 3 rate of Income Support
 - New arrangements for down-rating benefits for people in hospital
- X advises councils of changes to social security benefits rates from 7 April 2003, the most recent values of National Savings Certificates, and Carer's Allowance.
- XI advises councils of the publication of 'The Care Home Guide', which updates and extends 'Moving into a care home'.

LAC(2003)14

CHANGES TO LOCAL AUTHORITIES CHARGING REGIME FOR COMMUNITY EQUIPMENT AND INTERMEDIATE CARE SERVICES

This guidance explains the changes to local authority social services departments' charging regime for intermediate care and community equipment services resulting from the Community Care (Delayed Discharges etc) Act 2003, with effect from 9 June 2003. The regulations making these changes are attached with this guidance.

CIRCULAR

SUMMARY

LAC(2003)22

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.20 NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (NO.2) (ENGLAND) REGULATIONS 2003

This circular:

- I announces a new savings disregard into the financial assessment for residential accommodation, to come into force on 6 October 2003.
- II announces a disregard of cash in lieu of concessionary coal for temporary residents into the financial assessment for residential accommodation, to come into force on 6 October 2003 and deals with other matters linked to the introduction of Pension Credit.
- III announces a disregard of payments under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 into the financial assessment for residential accommodation, to come into force on 6 October 2003 and covers other matters.
- IV reminds councils of how the financial assessment for home care and other non-residential care services deals with the introduction of Pension Credit.

LAC(2004)9

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.21 NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2004

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £18.10 that comes into force on 12 April 2004. It applies to everyone in care homes, including care homes with nursing on the premises, receiving help to meet costs from councils with social services responsibilities (hereafter referred to as 'councils'), under Part 3 of the National Assistance Act 1948. It reminds councils of the purpose of the PEA.
- II announces the revision of the capital limits from £12,000 (lower) and £19,500 (upper) to £12,250 (lower) and £20,000 (upper) which are to come into force on 12 April 2004. Councils are reminded of the effect on charges for home care.
- III announces the revision of the savings disregard from up to £4.50 to up to £4.65 per week for individual supported residents aged 65 and over. The savings disregard will also increase from up to £6.75 to up to £6.95 per week for couples. The savings disregard provisions regarding the treatment of couples have also been amended so that the disregard does not apply where it is the resident's partner who is in receipt of the savings credit.
- IV advises councils of a new disregard for ex-gratia payments from the Skipton Fund to people who have been infected with hepatitis C as a result of NHS treatment with blood or blood products. The date on which this scheme will begin is still to be finalised.
- V Reminds councils who have not returned their audited certificate of expenditure for 2002/2003 for the Deferred Payments grant that they must do so.

CIRCULAR

SUMMARY

LAC(2004)20

NATIONAL ASSISTANCE ACT 1948 (CHOICE OF ACCOMMODATION) DIRECTIONS 1992

NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001

This guidance replaces the guidance that accompanied the Choice of Accommodation Directions 1992 ('the Directions') and the further guidance included in LAC (2001) 29 to take account of the National Assistance Act 1948 (Choice of Accommodation) (Amendment) (England) Directions 2001 and the National Assistance (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001 ('the Regulations').

The Directions are intended to ensure that when councils with social services responsibilities ('councils') make placements in care homes or care homes providing nursing care, that, within reason, individuals are able to exercise genuine choice over where they live.

The Regulations give individuals the right to enter into more expensive accommodation than they would otherwise have been offered in certain circumstances, these are outlined in paragraph 3 of this guidance.

This guidance sets out what individuals should be able to expect from the council that is responsible for funding their care, subject to the individual's means, when arranging a care home place for them. This guidance is intended to describe the minimum of choice that councils should offer individuals. Even when not required to act in a certain way by the Directions or the Regulations, councils should make all reasonable efforts to maximise choice as far as possible within available resources.

LAC(2004)25

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.22 NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2004

This circular:

- I announces the new disregard for student childcare grants for NHS funded students.
- II announces the new disregard for the Age related payments to pensioners over 70. Councils are reminded of the same effect on charges for home care.
- III it reminds councils that the Skipton Fund payments came into force on 12 May 2004 to people who have been infected with hepatitis C as a result of NHS treatment with blood or blood products.
- IV reminds councils who have not returned their audited certificate of expenditure for 2002/2003 for the Deferred Payments grant that they must do so.
- V it reminds councils that the updated examples of the savings disregard are now available on the charges website.
- VI reminds councils that from 29 October that Housing benefit is payable to people who enter residential accommodation for a short period.
- VII reminds councils Pension credit can be backdated for 12 months.

CIRCULAR

SUMMARY

LAC(2005)7

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.23 NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2005 (S.I. 2005/708)

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £18.80, which is to come into force on 11 April 2005. The PEA applies to all care home residents receiving help from councils with social services responsibilities (hereafter referred to as 'councils') to meet the cost of accommodation provided under Part 3 of the National Assistance Act 1948. Councils are also reminded of the purpose of the PEA.
- II announces the revised capital limits of £12,500 (lower capital limit) and £20,500 (upper capital limit), which are to come into force on 11 April 2005. Councils are also reminded of the effect of the revised capital limits on charges for home care.
- III announces the revised savings disregards of up to £4.85 per week for individual supported residents aged 65 and over and up to £7.20 per week for couples, which are to come into force on 11 April 2005.
- IV advises councils of a new income and capital disregard to cover payments of financial support made to special guardians or prospective special guardians under a new scheme to be introduced by the Department for Education and Skills.
- V Advises councils of the £10 income disregard which applies to recipients of the new Armed Forces Compensation Scheme (AFCS) announced by the Ministry of Defence.
- VI reminds councils of the guidance in relation to residents who are unable to manage their own affairs and alerts them to the role of the Public Guardianship Office in this area.
- VII reminds councils of their powers to operate deferred payments arrangements.

LAC(2005)18

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.24 NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2005 (S.I. 2005/3277)

This circular:

- I advises of changes to the Charging for Residential Accommodation Guide (CRAG) to take account of the coming into effect of the Civil Partnerships Act 2004.
- II advises councils of the need to take account of one-off age related payments of £200 to households with someone aged 65 or over to help with council tax bills, and £50 to households with someone aged 70 or over to help with living expenses, and to disregard such payments from capital when assessing a person's ability to pay for residential costs.
- III advises of the need to ensure that financial support for adopters provided pursuant to regulations made under the Adoption and Children Act 2002 continues to be disregarded from capital and income when assessing a person's ability to pay for residential payments.

CIRCULAR

SUMMARY

LAC(2006)12

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO.25 NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2006

This circular:

- I announces the revised Personal Expenses Allowance (PEA) of £19.60, which is to come into force on 10 April 2006. The PEA applies to all care home residents receiving help from councils with social services responsibilities (hereafter referred to as 'councils') to meet the cost of accommodation provided under Part 3 of the National Assistance Act 1948. Councils are also reminded of the purpose of the PEA.
- II announces the revised capital limits of £12,750 (lower capital limit) and £21,000 (upper capital limit), which are to come into force on 10 April 2006. Councils are also reminded of the effect of the revised capital limits on charges for home care.
- III announces the revised savings disregards of up to £5.05 per week for individual supported residents aged 65 and over and up to £7.50 per week for couples, which are to come into force on 10 April 2005.
- IV reminds councils of the Department's encouragement of local authorities to exercise their discretion NOT to apply the liable relatives rules, as set out at Section 11 of the CRAG.

LAC(DH)
(2007)4

NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2007

This circular

- I. Announces the revised personal Expenses Allowance (PEA) of £20.45 which is to come into force on 9 April 2007. The PEA applies to all care home residents receiving help from councils with social services responsibilities (hereafter referred to as "councils") to meet the cost of accommodation provided under Part 3 of the National assistance Act 1948. Councils are also reminded of the purpose of the PEA.
- II. Announces the revised capital limits of £13,000 (lower capital limit) and £21,500 (upper capital limit), which are to come into force on 9 April 2007. Councils are reminded of the effect of the revise capital limits on charges for home care.
- III. Announces the revised savings disregards of up to £5.25 per week for individual supported residents aged 65 and over and up to £7.85 per week for couples, which are to come into force on 9 April 2007.
- IV. Reminds councils of the Department's encouragement of local authorities to exercise their discretion not to apply the liable relatives rule, as set out at Section 11 of the CRAG.

LAC(DH)
(2009)3

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO. 28

- I Sets out the revised PEA of £21.90 from 6 April 2009.
- II Sets out the revised capital limits of £14,000 and £23,000 from 6 April 2009.
- III Sets out the revised savings disregards of up to £5.65 per week for individual supported residents aged 65 and over and up to £8.45 per week for couples from 6 April 2009.
- IV Reminds councils that they are expected to have a deferred payments scheme in place and that they could be challenged if they did not consider exercising their discretion to offer deferred payments in individual cases.
- VI Advises councils of the need to ensure they properly apply the provisions concerning the 12 week property disregard with regard to former self-funders.
- VII Reminds councils of guidance issued by the Department in LAC(2004)20 on the Choice of Accommodation Directions, that where a third party top-up is being paid the council remains responsible for the full cost of accommodation, and the third parties paying top-ups have the choice of paying the top-up fee direct to the care home or to the council.
- VIII Alerts councils to the coming into force of section 147 of the Health and Social Care Act 2008, which repeals sections 42 and 43 (the liable relatives rule) of the National Assistance Act 1948 with effect from 6 April 2009.

CIRCULAR

SUMMARY

LAC(DH)
(2010)2

CHARGES FOR RESIDENTIAL ACCOMMODATION – CRAG AMENDMENT NO 29

- I. Sets out the revised Personal Expenses Allowance (PEA) of £22.30, which comes into force on 12 April 2010.
- II. Sets out the revised capital limits of £14,250 (lower capital limit) and £23,250 (upper capital limit), which comes into force on 12 April 2010.
- III. Sets out the revised savings disregards of up to £5.75 per week for individual supported residents aged 65 and over and up to £8.60 per week for couples, which comes into force on 12 April 2010.
- IV. Sets out changes to entitlement to the £20 disregard as a consequence to the rise in women's pension age from 60 to 65 between 6 April 2010 and 5 April 2020.
- V. Alerts councils that the age qualification to property disregard for relatives will remain at 60 and will NOT change as a result of the rise in women's pension age.
- VI. Alerts councils to an amendment to the regulations to bring the property disregard for partners into line with Government policy and existing custom and practice.
- VII. Alerts councils to changes to the Charging for Residential Accommodation Guide (CRAG).
- VIII. Provides guidance on the valuation of shared properties for residential charging.

LAC(DH)
(2011)1

- I. Sets out the revised Personal Expenses Allowance (PEA) of £22.60, which comes into force on 11th April 2011.
- II. Announces that the capital limits will remain at their current level (i.e. lower capital limit £14,250 and upper capital limit £23,250).
- III. Announces that the savings credit disregards will remain at their current level (i.e. up to £5.75 per week for individual supported residents aged 65 and over and up to £8.60 per week for couples).
- IV. Advises councils of planned changes to ex-gratia payments made to people who have received contaminated blood and how these should be treated in the financial assessment for residential charging.
- V. Advises councils of how Equitable Life compensation payments should be treated in the financial assessment for residential charging.