



Department of  
**Health, Social Services  
and Public Safety**

An Roinn  
**Sláinte, Seirbhísí Sóisialta  
agus Sábháilteachta Poiblí**

[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

# **CHARGING FOR RESIDENTIAL ACCOMMODATION GUIDE (CRAG)**

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## SECTION 1 – INTRODUCTION

### About this guidance

#### Status of the guidance

- 1.001 This guidance is issued under Article 17(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 ("the 1972 Order") by the Department of Health, Social Services and Public Safety ("the Department"). It gives general guidance on the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 that apply in the case of residents who have their residential accommodation provided or arranged by HSS Trusts by virtue of Articles 15 and 36 or 99 of the 1972 Order. Under the Functions of Health and Social Services Boards (No. 1) Direction (Northern Ireland) 1973, as amended, the Department has delegated to HSC Board / Trusts the duty to provide or secure the provision of personal social services (including residential accommodation) to promote the social welfare of the people of Northern Ireland.

#### Legislation

- 1.002 Where a paragraph in this guidance is directly linked to an Article of the 1972 Order or regulation, the relevant Article or regulation is shown immediately following the text of the paragraph. *Art.* Refers to an Article of the 1972 Order, *Reg.* Refers to a regulation of the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993. *Schedule* refers to a schedule to the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993.

#### Gender

- 1.003 In all paragraphs the words "he" or "his" should be taken as also referring to "she" or "her". The male form has been used purely for ease of writing and reading.

### General

#### Statutory basis

- 1.004 The 1972 Order requires that a person is charged for residential accommodation i.e. accommodation in a registered residential care home or nursing home or in a Trust managed home, arranged under Article 15 of the 1972 Order. Article 36 provides for charging in an independent sector care home and Article 99 for charging in a Trust managed residential home.

*Art. 99(1)*

*Art. 36(3)*

- 1.005 Article 99 requires the Department to determine a standard rate for Trust managed accommodation. If a resident is unable to pay the standard rate, the Trust must assess his ability to pay, and decide what lower amount should be charged. The

setting of the standard rate has been delegated to HSC Board /Trusts (see 1.006 and 1.007).

- 1.005A Trusts should not charge for aftercare services, which can include residential care, provided under Article 18 of the Mental Health (NI) Order 1986. 'Aftercare' includes the provision of accommodation for persons who are subject of a guardianship order that requires them to reside at a place other than a hospital. Therefore the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 do not apply and the Trust cannot charge a person for the residential accommodation in which he resides whilst subject to guardianship under the 1986 Order.

### **Standard Rate**

- 1.006 Article 99 requires the Department to set the standard rate for Trust managed homes at an amount equivalent to the full cost to the Trust of providing the accommodation. Responsibility for the determination of the standard rate was delegated to HSC by the Department in a Direction.

*Art. 99(2)*

- 1.007 There is no standard rate set for independent sector residential care and nursing home accommodation. However, for the purposes of this guidance manual and the Assessment of Resources Regulations, the standard rate for accommodation in homes not managed by a Trust will be the gross cost to the Trust of providing or purchasing the accommodation under a contract with the independent sector home. In the case of nursing home care the standard rate will be the gross cost less the current amount payable by the HSC for nursing care in nursing homes.

*Art. 36(3)*

## **Assessing ability to pay and how much to charge**

### **Regulations**

- 1.008 Where a resident is unable to pay the standard rate in a Trust managed home or a full rate in an independent sector home, the Trust must assess his ability to pay using regulations made for that purpose. These are The Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993.

*Art. 99(5)*

*Art. 36(6)*

### **Trust managed residential homes**

- 1.009 In the case of placements to Trust managed homes, the Trust must charge the full cost of providing the accommodation – the "standard rate". Where the Trust is satisfied that a resident is unable to pay the standard rate, it must assess his ability to pay and, on the basis of that assessment decide the lower amount which should be paid.

*Art. 99(3)*

### **Independent sector care homes**

- 1.010 A contract made with an independent care home must include arrangements for the Trust to pay the home for the accommodation, as well as specifying the amount to be paid. The Trust must then ask the resident to refund that amount to the Trust. Where the resident satisfies the Trust that he is unable to make a full refund, the Trust must assess his ability to pay in the same way as it does for a person in a Trust managed home, and decide the lower amount to be refunded. (See 1.021 to 1.024 for collection of charges).

*Art. 36(3)-(5)*

### **Reduction for assistance with management of Trust managed residential homes**

- 1.011 The liability of a resident to pay for accommodation in a Trust managed home may be reduced where he carries out some work which helps materially in the management of the premises. The payment the resident is liable to make must be assessed in accordance with Article 99 and the Trust may then decide to reduce that liability on account of the work performed.

*Art. 99(4)*

- 1.012 The provisions in paragraph 1.011 do not apply to people in homes which are not managed by a Trust.

### **Information to be given to the resident**

- 1.013 The Trust must ensure that the resident is given a clear explanation of how the assessment of his ability to pay is carried out and also that he receives a written statement of how the weekly contribution has been calculated. There is no requirement to inform the resident automatically what the assessed contribution will be on a week-by-week basis, particularly where a new resident's contribution may vary in the first few weeks of admission because, for instance, of the effects 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 contribution may fluctuate. There is also no requirement to specify the assessed contribution in the contract with the home.

### **Residents unable to handle their own affairs**

- 1.014 There will be occasions where residents are unable to provide the Trust with the information needed to assess the contribution because they are generally unable to handle their own affairs. In these cases the Trust should find out if anyone has a Power of Attorney, has been appointed Controller by the Office of Care and Protection or is dealing with the resident's affairs (e.g. someone who has been given appointee ship by the Department for Social Development for the purpose of Benefit payments).

## **Treatment of fractions in assessment**

- 1.015 When any calculation in the assessment results in a fraction of a penny, round up if that would be in the resident's favour, otherwise round down.

*Reg. 4*

## **Social Security Benefits**

### **Trust managed homes**

- 1.016 People in residential accommodation which is managed by a Board are entitled to Income Support/Pension Credit at an amount equivalent to the basic State Retirement Pension. People in this accommodation who receive at least the basic pension are not entitled to Income Support/Pension Credit.
- 1.017 People in Trust managed residential accommodation which does not include board e.g. self contained flats and some independent living units are entitled to Income Support/Pension Credit as if they were living in their own home and may claim Housing Benefit.

### **Independent sector care homes**

- 1.018 With effect from 6 October 2003 the Residential Accommodation rate of Income Support/Minimum Income Guarantee was abolished and people in residential accommodation, which is managed or provided by a Trust, are entitled to normal rates of Income Support/Pension Credit.
- 1.019 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 payments where appropriate.

### **Attendance Allowance/Disability Living Allowance (Care Component)**

- 1.019A See Annex F for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care Component).

### **Admission to Hospital**

- 1.020 When a resident is admitted to hospital, his Social Security benefits may be reduced after a period. See Annex D for details.

## **Collecting charges from residents in independent care homes**

### **Agency arrangements**

- 1.021 Normally residents will pay their assessed charge direct to the Trust. However, it may not always be practical for Trusts to collect charges from residents in

independent sector residential care and nursing homes for whom they have made accommodation arrangements. Alternatively, Trusts may consider appointing homeowners to act as their agents to carry out collection of the assessed charges on their behalf.

- 1.022 It is emphasised that this would be an administrative arrangement only. As agents, homeowners would be under the direction of the relevant Trust and would not be free to exercise their own discretion. They would be required to lodge the money collected each week to the Trust's bank account.

### **Resident to pay the charges direct to the home**

- 1.023 Although, residents will normally pay their assessed contribution direct to the Trust, Article 36(7) of the 1972 Order provides for an exception to this rule for residents placed by Trusts in independent sector homes: where the resident, the Trust, 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 Trust. This will leave the Trust responsible for paying the home the remainder of the cost.

### **Liability for payment to the homeowner**

- 1.024 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, Trusts should note they remain responsible for the full amount should the resident fail to pay the home as agreed. In such a case the Trust will recover the charge from the resident in the normal way.

*Art. 36(7)*

### **Charges for Day Care services**

- 1.025 Residents should not be charged extra for any day time activities which have been negotiated as part of the Trust's contract with the care home, as the cost of these activities should already be included in the rate that forms the basis of the assessed charge paid to the Trust. Any activities over and above the care contracted may have to be paid for separately.

### **Preserved Rights**

- 1.026 The responsibility for residents with preserved rights to higher rates of income support transferred to Trusts on 8 April 2002. Trusts were advised that the assessment of these residents' resources should be undertaken under the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 in the same way that other residents' resources are assessed. Departmental circular guidance (ECCU1/2002) on the abolition of Preserved Rights provided guidance on the transfer of responsibility to care management.

## **Liaison with Department for Social Development/Social Security Agency**

- 1.027 It is important that Trusts maintain good liaison arrangements with the relevant local District Office of the Social Security Agency, as in some aspects of the assessment, if they have not been able to obtain necessary information from the resident or another source, Trusts may need to contact that office (see Circular HPSSR(3) 2/93).

## **Complaints**

- 1.028 Complaints about the level of contribution assessed by a Trust are subject to the HSC complaints procedures. Complaints should be raised with the HSC Trust through the HSC Complaints Procedure as outlined in the document Complaints in HSC: Standards and Guidelines for Resolution and Learning available on <http://www.dhsspsni.gov.uk/hsccomplaints>.

## **Permanent and temporary admission**

- 1.029 Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. It is important that residents and their family or carer are made aware by the Trust of the status of admission which should be agreed and shared openly with them and put in writing.

## **SECTION 2 – LESS DEPENDENT RESIDENTS**

### **General**

- 2.001 Trusts can provide or arrange the provision of residential accommodation under Article 15 or 36 of the 1972 Order. Some of the people accommodated in residential care homes (usually people under pension age), are able to live more independently but still require some degree of support.
- 2.002 Less dependent residents are encouraged to live as independently as possible, perhaps with a view to eventually living independently in the community. They therefore need extra money for items such as food, household expenses or travel to work.
- 2.003 Subject to the exception outlined in section 1.005A, a charge must be made for all adult accommodation placements made by Trusts. If a resident cannot pay the full charge, the Trust is required to assess his ability to pay in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993.
- 2.004 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 allowances if they are to live as independently as possible. There is special provision in the regulations, therefore, to enable Trusts to treat "less dependent" residents differently where they consider it reasonable in the circumstances to do so.

### **Identifying "less dependent" residents**

- 2.005 For the purposes of the charging rules a "less dependent" resident is a person who lives in Trust managed accommodation that does not provide board e.g. self-contained flatlets and hostels.

*Reg. 2(1)*

### **Definition of "board"**

- 2.006 In 2.005 above, "board" means at least some cooked or prepared meals, cooked or prepared by someone other than the resident (or a member of his family) and eaten in the accommodation, where the cost of the meals is included in the standard rate determined for the accommodation.

*Reg. 2(1)*

### **Assessing "less dependent" residents**

- 2.007 It is up to the Trust 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 are disregarded.

*Reg. 5*

2.008 Where a resident is in Trust managed accommodation which does not provide board, or in independent sector accommodation which is not required to register, the capital limits for Income Support and Housing Benefit will be £10,000 and £16,000. Pension Credit has a lower limit only of £10,000.

## SECTION 3 – TEMPORARY RESIDENTS

### Who is a temporary resident?

3.001 The definition of temporary resident allows the Trust to regard a person's stay as temporary if it is likely to last for any period not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks.

*Reg. 2(1)*

3.001A An admission is temporary either if the agreed intention is for it to last for a limited time period, such as respite, or there is uncertainty that permanent admission is required.

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

a) he receives Income Support/Pension Credit which includes an amount in respect of home commitments; and/or

b) Housing Benefit (HB) continues to be paid in respect of his home address.

Trusts should note, however, that Income Support/Pension Credit housing costs and HB may only be payable for 13 weeks in some circumstances.

3.003 Where a temporary resident has a partner their resources cannot be jointly assessed (see Section 4).

3.004 Where a stay, which was initially expected to be permanent, turns out to be temporary (e.g. the resident's condition improves dramatically when it was not expected to do so), it would be unreasonable to continue to apply to that resident any rules which would have affected him as a permanent resident (e.g. treatment of the former dwelling, in particular the placing of a charge on the resident's interest in the property).

3.004A Similarly a stay, which was initially expected to be temporary, may turn out to be permanent. In such cases, it would be unreasonable to assess the resident's charge as if he was a permanent resident from the outset (e.g. take into account AA/DLA) as these resources may no longer be available to the resident. Assessment as a permanent resident should, therefore, begin from the date it is agreed that the stay is to become permanent.

### Charging for the first 8 weeks

#### Up to 8 weeks

3.005 An assessment of ability to pay is not required for the first 8 weeks of a stay. It is for the Trust 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 13.

*Art. 99(6)*

*Art. 36(8)*

### **After 8 weeks**

- 3.006 After 8 weeks, the Trust must charge the resident at the full or standard rate for the accommodation and carry out an assessment of his ability to pay.

### **Income Support/Pension Credit for temporary residents**

- 3.006A Where a resident aged under 60 years enters residential accommodation for a temporary period Income Support is not payable if his capital exceeds £8,000. This may mean that, where the resident has capital of above £8,000 but not more than £16,000, the resident's contribution towards the cost of his or her accommodation will not include any Income Support.
- 3.006B Where a resident aged 60 years or over enters residential accommodation for a temporary period, the calculation of Pension Credit, including deemed income from capital, will be the same as when he was in his own home i.e. the lower capital limit of £10,000 for permanent residents will not apply. This may mean that Pension Credit that would normally be payable to a permanent resident may not be payable at the same level.

### **Assessing ability to pay**

- 3.007 If the Trust decided to make an assessment straight away, or from the eighth week, the ability to pay should be assessed in accordance with the following paragraphs.

#### **Capital**

- 3.008 Disregard the dwelling normally occupied as the resident's home where:
- a) the resident intends to return to occupy that dwelling and 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 for him to return to.

*Schedule 4 para 1*

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

*Schedule 4 para. 1*

#### **Income**

- 3.009 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*

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

*Schedule 3 para. 3*

3.011 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 be:

- a fixed heating charge;
- mortgage payment or rent not met by IS/HB
- service charges not met by IS/HB
- insurance premiums

*Schedule 3 para. 27*

3.012 Where neither Income Support/Pension Credit or Housing Benefit are in payment, in respect of the home address, assess the resident's income in accordance with Sections 8 and 9, and then disregard from the total such amount as appears reasonable to allow in respect of home commitments. Such expenses might be:

- 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)
- any insurance premiums
- charges for fuel
- payments under:
  - co-ownership scheme

- tenancy agreement or licence

*Schedule 3 para. 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 para. 27*

### **Supporting People Payments**

3.013 From 1 April 2003, under ‘Supporting People’ arrangements, the Northern Ireland Housing Executive has the power to make 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 Housing Executive to residents or to housing support providers on resident’s behalf. If liability to meet charges continues whilst a resident is temporarily in a care home, payments made by the Housing Executive to meet the charges can be disregarded in the assessment of the resident’s income or capital.

3.014 Payments that should be disregarded are those which are made to meet charges that are of a kind that are specified in regulation 2 of the Housing Support Services Regulations (NI) 2003. These are broadly defined to include activities necessary to support individuals in independent tenancies here this does not conflict with similar services provided as personal care, and may include payments to meet charges for:

- general counselling and support to assist a resident to comply with terms of the tenancy agreement, for example maintaining the safety and security of their dwelling and arranging minor repairs etc;
- assistance with shopping and errands and advising on food preparation;
- advise on personal budgeting, welfare rights, resettlement and dealing with neighbours
- maintaining and responding to emergency alarms or call systems, controlling access to and cleaning of rooms where the individual is unable to do this; and
- encouraging social intercourse or arranging social events

Additionally, where a resident is paying part or all of the cost of a housing support service himself this amount should be disregarded.

*Schedule 3 paragraphs 27D and 27E*

*Schedule 4 paragraphs 23 and 24*

### **Couples**

3.015 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**

3.016 Where the resident is a temporary resident, AA or DLA (Care) should be completely ignored – but remember that either benefit will be withdrawn after 4 weeks if the resident is relying on public support. These rules also cover Constant Attendance Allowance and Exceptionally Severe Disability Allowance payable with Industrial Injuries Disablement Benefit or War Disablement Pension.

*Schedule 3 para. 6*

## **SECTION 4 - COUPLES**

### **Trust treatment of couples**

- 4.001 Under the 1972 Order, the Trust has no power to assess a couple, or civil partners, according to their joint resources. Each person entering residential care or nursing home accommodation should be assessed according to their individual means, although the liability of a partner to maintain their spouse (see Section 11) may be considered in each case.
- 4.002 However, it should be noted that the Trust has no powers to use the assessment regulations as a basis for assessing how much a liable partner should be able to contribute towards the cost of the residential accommodation.

### **Capital Limits**

- 4.003 Where a resident is one of a couple or civil partner (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 charged the standard or full rate for his accommodation.

### **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. In every case, the Trust 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;
- mortgage payments, rent or service charges not met by Income Support/Pension Credit and Housing Benefit;
- housing support charges
- insurance premiums

## **Permanent residents**

- 4.005 Where one, or both, members of a couple or civil partnership are admitted permanently to residential accommodation the Trust 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 4.007 to 4.019 have been deleted and reproduced as Annex E**

## **SECTION 5 – PERSONAL EXPENSES ALLOWANCE (PEA)**

### **Purpose of the personal expenses allowance**

- 5.001 The personal expenses allowance (PEA) is intended to enable Trust supported residents to have money each week to spend as they wish. Trusts are reminded that PEA should not be spent on services that have been assessed and contracted for by the Trust.

### **Amount of the personal expenses allowance**

- 5.002 In assessing a resident's ability to pay for his accommodation, the Board must ensure that he retains the specified amount for personal expenses.
- 5.003 The amount allowed in the assessment for personal expenses is the same as that specified in the annual CRAG circular. This amount will be reviewed each year and the Department will notify Trusts of any change in the rate of personal expenses. The amount is the same for each resident, whether in a Trust managed home or an independent sector home. It is currently £22.60.
- 5.004 Residents should be left with the full PEA following the financial assessment of their resources.

### **Use of the personal expenses allowance to ‘top-up’ charges**

- 5.005 The Health and Personal Social Services (Northern Ireland) Order 1972 does not permit a resident to use their own resources, which includes personal expenses allowance, to pay for more expensive accommodation than a Trust would be prepared to pay for. Where a resident, with the agreement of a Trust, enters more expensive accommodation, the difference may only be met by a third party such as a relative or friend of the resident.

## 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 Office of Care and Protection or a Controller 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
    - Individual Savings Accounts (ISA's) and Tax Exempt Special Savings Accounts (TESSA's)
    - Unit Trusts
    - Co-operative share accounts
    - cash
    - trust funds (see Section 10).

## **Treatment of Investment Bonds**

- 6.002A 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 Trusts should seek the advice of their legal departments when they arise. However, it is possible to offer some general guidance.
- 6.002B Trusts are advised that if an investment bond is written as one or more life insurance policies that contain cash-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 para 15, Schedule 10 of the Income Support (General) Regulations (Northern Ireland) 1987). In contrast, the surrender value of an investment bond without life assurance is taken into account.
- 6.002C 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 8.014 B and C).

## **Effect on capital**

### **Capital Limits**

- 6.003 A resident with capital of more than £23,250 is liable to pay the standard rate for the accommodation, if in a Trust managed home, or the full amount of the contracted fee if in an independent sector home. Where a resident is one of a couple or 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 share of jointly held capital is more than £23,250.

*Reg. 20*

- 6.004 Capital of £14,250 or less is fully disregarded.

- 6.005 Capital over £14,250 and up to £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**

- 6.006 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 £250 or part of £250 over £14,250. This is called "tariff income".

*Reg. 28*

A Tariff Income table is in Annex A.

### **Examples**

1. The resident has £14,750 capital, £14,250 is disregarded the tariff income of £2 is taken into account as income.
2. A resident has £18,100 capital, £14,250 is disregarded and tariff income of £16 is taken into account as income.

NB 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.

## **Beneficial ownership of capital**

### **Does the resident own the capital?**

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

### **Ownership disputed**

6.008 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.

### **6.009 Examples**

1. A resident has £14,000 in a building society account in his own name. He says that £3,000 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 the UK. 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 taken into account as the resident's capital.

## **Joint beneficial ownership of capital**

- 6.010 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.

*Reg. 27(1)*

### **Example**

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.

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**

- 6.011 For the purpose of valuation only the value of a capital asset other than National Savings Certificates or Ulster Savings Certificates (see 6.017) is the current market or surrender value, whichever is higher, less:

- a) 10% of that value if there would be any expenses involved in selling the asset only where there will be actual expenses. The expenses must be connected with the actual sale, and not simply the realisation of an asset, e.g. the cost of fares to withdraw money from a bank are not expenses of sale. The deduction is always 10 % even if it is known from the outset that the actual expenses will be more or less than 10%;

and

*Reg. 23(1)(a)*

- b) any outstanding debts secure on the asset, e.g. a mortgage.

- 6.012 A capital asset may have a current market value (e.g. stocks or shares) or a surrender value (e.g. premium bonds). 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.

- 6.013 If the resident and the assessing officer both agree that, after deducting the amounts in paragraph 6.011 a) and b) (where appropriate), the total value of the resident's capital will be:

- a) more than £23,250; or

b) £14,250 or less

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

6.014 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**

6.015 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. (no other info) For the purposes of valuation only, the expenses of sale (10%) should be allowed 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.

#### **Debt secured on asset**

6.016 "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, 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. 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 and Ulster Savings Certificates**

6.017 The value of National Savings Certificates and Ulster 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 1<sup>st</sup> July if they had been purchased on the last day of the issue; and

b) in any other case, the purchase price

*Reg. 23(2)*

Annex H gives details on how to calculate the value of National Savings Certificates.

## **Disregards on capital**

6.018 Different types of capital will be disregarded for different periods as covered in paragraphs 6.019 to 6.034.

## **Capital held abroad**

6.019 If capital is held in a country outside the UK (i.e. outside 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.

### **Transfer of capital to UK not prohibited**

6.020 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 6.011.

*Reg. 24*

### **Sources of valuation**

6.021 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

6.022 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**

6.023 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 Trust 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, a government official or a solicitor.

### **Evidence required of value**

6.024 If the evidence shows that some restriction prohibits the transfer of the value of any of the resident's assets to the UK, the Trust 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**

- 6.025
1. If the transfer of the capital is prohibited, the Trust 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 6.019 to 6.022.

## **Capital not immediately realisable**

6.026 Capital which is not immediately realisable (e.g. National Savings Bank investment accounts which require one month's notice, 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 reassess at intervals in the normal way.

## Disregarded indefinitely

6.027 The capital assets listed below are disregarded indefinitely:

- property in specified circumstances (see Section 7)
- surrender value of any:
  - Life insurance policy *Schedule 4 para 13*
  - Annuity *Schedule 4 para 9*
- payments of training bonus up to £200 *Schedule 4 para 17*
- payments in kind from a charity *Schedule 4 para 17*
- any personal possessions such as paintings or antiques unless they were purchased with the intention of reducing capital for the purpose of reducing the Board charge (see para 6.064) *Schedule 4 para 8*
- any capital which is to be treated as income or student loans (see para 6.036 to 6.037A and 12.012 to 12.017) *Schedule 4 para 14*
- any payment made by or derived from:
  - the Macfarlane Trust
  - the Macfarlane (Special Payments) Trust
  - the Macfarlane (Special Payments) (No 2) Trust
  - the Fund (payments to non-haemophiliacs infected with HIV)
  - the Eileen Trust
  - the MFET Limited
  - the Independent Living Fund
  - the Independent Living (Extension) Fund
  - the Independent Living (1993) Fund and the Independent Living Fund (2006)
  - the Skipton Fund
  - the London Bombings Relief Charitable Fund *Schedule 4 para 15*
- 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) *Reg. 21(2) and Schedule 4 para 10 and 19*
- the value of a right to receive:
  - income under an annuity *Schedule 4 para 9*

- outstanding instalments under an agreement to repay a capital sum  
*Schedule 4 para 13*
  - payment under a trust where the funds derive from a payment for personal injury  
*Reg. 21(2) and Schedule 4 para 10*
  - income under a life interest or life rent  
*Schedule 4 para 11*
  - income (including earnings) payable in a country outside the UK which cannot be transferred to the UK  
*Schedule 4 para 12*
  - an occupational pension  
*Schedule 4 para 15*
  - any rent  
*Schedule 4 para 15*
- (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.  
*Reg. 21(2) and Schedule 4 para 19*
  - The value of the right to receive any income under 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.  
*Reg. 21(2) and Schedule 4 para 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).  
*Reg. 16(5) and 15(2) and Schedule 3 para 10*
  - any Social Fund payment  
*Schedule 4 para 13*
  - refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home  
*Schedule 4 para 13*
  - any capital resource which the resident has no rights to as yet, but which will come into his possession at a later date, e.g. on reaching a certain age.  
*Schedule 4 para 4*

- payments from the Social Security Agency to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement.  
*Schedule 4 para 17*
- the amount of any bank charges or commission paid to convert capital from foreign currency to sterling.  
*Schedule 4 para 15*
- payment to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit)  
*Schedule 4 para 17*
- community charge rebate or council tax rebate  
*Schedule 4 para 17*
- money deposited with a Housing Association as a condition of occupying a dwelling
- any Child Support Maintenance Payment (unless the child is accommodated with the resident under Article 15 or 36 of the 1972 Order, in which case take the payment fully into account)  
*Reg 6A*
- The value of any ex-gratia payments made on or after 1<sup>st</sup> February 2001 by the Secretary of State in consequence of a person's or person's spouses or civil partner's imprisonment or internment by the Japanese during the second world war.  
*Schedule 4 para 20*
- 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
- Any payments made under regulation 9 of the Age Related Payments (Northern Ireland) Order 2004  
*Schedule 4 para 26*
- Payments made under a trust established out of funds provided by the Secretary of State in respect of persons suffering from Variant Creutzfeldt-Jacob disease.  
*Schedule 4 para 21*

**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 Trust 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 residents remaining capital would be completely disregarded in addition to the £10,000 ex-gratia payment, and the tariff rules applied to the remaining £750.

## **Disregarded for 12 weeks**

- 6.028 In the case of a resident who becomes a permanent resident on or after 22 April 2002 the value of any dwelling which he would otherwise normally occupy as his main or only residence (see 7.002A)

## **Disregarded for 26 weeks or longer**

- 6.029 The capital assets listed below are disregarded for 26 weeks or longer where the Trust 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 para 5*

- money acquired specifically for repairs to or replacement of the resident's home or personal possessions, provided it is used for that purpose (26 weeks from the date the money was acquired, or longer where appropriate).

*Schedule 4 para 7*

- 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 para 16*

- premises which the resident intends to occupy as his home where essential repairs or alteration are required (26 weeks from the date the resident takes action to effect the repairs, or longer where appropriate)

*Schedule 4 para 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 para 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 para 7*

- grant made in Great Britain 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 para 17*

## **Disregarded for 52 weeks**

6.030 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 for arrears due to non-payment of:
  - Mobility supplement
  - Attendance Allowance
  - Constant Attendance Allowance
  - Disability Living Allowance
  - Disability Working 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 Families Tax Credit
  - Working Tax Credit
  - Child Tax Credit
  - Housing Benefit
  - Special payments to pre-1973 war widows (see 8.049 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 para. 6*

### **Example**

A resident is assessed as being able to pay £75 per week pending receipt of Income Support. It is explained to the resident that the charge will be re-assessed once IS received and that back payments will be required. Although not required to do so, the resident chooses to payment payments of £90 per week. After six weeks arrears of IS 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 IS arrears. The remaining £90 becomes capital and is disregarded for 52 weeks.

- Payments or refunds for:
  - NHS glasses, dental treatment, patients' travelling expenses
  - expenses in connection with prison visits

*Schedule 4 para 17*

### **Disregard for 2 years**

6.030A Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of vCJD to:

- The victims parent (or guardian) for 2 years from the date of death of the victim (or from the date of payment from the trust, if later) or
- A dependent child or young person until they cease to be a member of the family (i.e. until they leave school between the ages of 16 and 17) – but with a minimum of 2 years

### **Disregarded for other periods**

6.031 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 6.032 onwards)

*Schedule 4 para 5*

#### **Meaning of reasonable period of disregard**

6.032 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**

6.033 The Trust 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 asset  
and
3. a statement of what steps if any, have been or will be taken to realise the asset, what these steps were and what is intended in the near future.

and

4. any other relevant evidence of, for example the person's health, receivership, liquidation, estate agent's confirmation of placing any property on the market.

#### **Action on receipt of information**

- 6.034 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.
- 6.035 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**

- 6.036 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 Trust have decided not to charge (see para 3.005), the first day on which the Trust 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.

*Reg.16(1)*

#### **Payments under annuity and bonds**

- 6.037 Any payment under an annuity will be treated as income (see 8.013). In some cases, the same conditions that apply to annuities also apply to bonds. If the resident receives an income from the bond such as a life interest or annuity income, the bond should be treated as income. Cases of doubt should be referred to the Trust's legal advisers.

#### **Third party payments made under an agreement to meet excess fees**

- 6.037A Where a Trust agrees to place a resident in a higher price home on the grounds that there is a third party willing to contribute towards the higher fee, a lump sum payment made by the third party should be divided by the number of weeks for

which the payment is made and taken fully into account as part of the resident's income (see 6.045A for payments to clear arrears).

*Reg. 16(4)*

## **Earnings**

6.038 Any income which is derived from employment is to be treated as earnings (see Section 9) and as such should not be treated as capital.

*Reg. 16(3)*

## **Income treated as capital**

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

### **Tax refunds**

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

*Reg. 22(2)*

### **Holiday pay**

6.041 Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment.

*Reg. 22(3)*

### **Income from a capital asset**

6.042 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 8.015).

*Reg. 22(4)*

### **Bounty Payments**

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

- a part time fireman
- an auxiliary coastguard
- a part time member of the Police Service of Northern Ireland
- a part time lifeboat man
- a member of the territorial or reserve forces
- a person in the army, restricted to part-time service in Northern Ireland under either the Army Act 1992, regulations under the Armed Forces Act 1966 or the terms of his commission.

*Reg. 22(1)*

### **Advance of earnings or loan from employer**

- 6.044 Any advance of earnings or loan made to an employed earner by the employer, should be treated as capital, if the resident is no longer in work, as the payment does not form part of the employee's regular income and would have to be repaid.  
*Reg. 22(5)*

### **Example**

A resident received £294 in one week but the pay slip showed that £200 of this was a loan made by the employer.

The Trust should treat £94 as earnings and £200 as capital.

### **Irregular charitable and voluntary payments**

- 6.045 Apart from certain exemptions (payments from AIDS trusts), charitable and voluntary payments which are neither made regularly nor due to be made regularly should be taken into account as capital in the normal way.  
*Reg. 22(7)*

### **Third party payments to help clear arrears**

- 6.045A Payments in 6.045 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 Trust, they are not treated as belonging to the resident, see 8.064).

### **Arrears of contributions to a child's custodian**

- 6.046 Any payments of arrears of contributions by a Trust to a custodian towards the cost and maintenance of a child should be treated as capital.  
*Reg. 22(6)*

## **Trust Funds**

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

## **Property**

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

## **Notional Capital**

6.049 In some circumstances, a resident may be treated as possessing a capital asset even where he does not actually possess it. This is called notional capital.  
*Reg. 25*

6.050 A resident's capital is the total of all capital, whether actual or notional. The total amount is treated in accordance with the capital rules in Section 6.  
*Reg. 21*

6.051 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.

6.052 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**

6.053 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

- a) capital held in a discretionary trust
- b) capital held in a trust derived from a payment in consequence of a personal injury  
*Reg. 25(2)*

- c) capital derived from an award of damages for personal injury and which is administered by a court  
*Reg. 25(2)*

- d) any loan which could be raised against a capital asset which is disregarded, for example the home.  
*Reg. 25(2)*

6.054 The Trust should distinguish between:

- a) 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 or Ulster Savings Certificates

- money held by the Registrar of a County Court which will be release on application; and
- b) 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**

- 6.055 When the Trust 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**

- 6.056 The Trust 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 Trust may treat the resident as still possessing the asset. The following factors will need to be considered.

*Reg. 25 (1)*

#### **Forms of capital to be considered**

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

#### **Example**

A resident gives a diamond ring worth £2,000 to her daughter the week before she entered residential accommodation. The Trust should not consider deprivation as, had the ring still been possessed, it would not have been 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**

- 6.058 The Trust should decide from available evidence whether the resident owned the capital (see 6.007 to 6.010 for details of ownership).

#### **Has deprivation occurred?**

6.059 It is up to the resident to prove that he no longer has a resource. Failure to do so will result in the Trust 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.

6.060 Examples of how a person has deprived himself of capital (although not necessarily for the purpose 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 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. Trusts 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 purposes of the Assessment of Resources Regulations.

**Purpose of disposing of an asset**

6.061 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.

6.062 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**

1. 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 Trust ignores the value of the resident's share in property while the spouse or civil partner lives there but the spouse or civil partner 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 must make part of his share of the proceeds 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.
2. 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. In these circumstances, it would be reasonable not to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.
3. A resident has £15,000 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 a deliberate deprivation. However, all the circumstances must be taken into account. If he was admitted as an emergency and had no reason to think he would not be in a position to drive the car at the time he bought it, in the Department's view, it would not be reasonable to treat it as deliberate deprivation.

### **Timing of the disposal**

- 6.063 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. The Trust 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 Article 101A of the Health and Personal Social Services (Northern Ireland) Order 1972 (see Annex I).

### **Conversion of capital to personal possessions**

- 6.064 Where, for the purpose of avoiding or reducing the charge for accommodation, capital which would not have been disregarded has been used to acquire personal possessions, the current market value of those possessions should be taken into account as an actual resource. Their market value should not be disregarded under para 6.027.
- 6.065 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 is 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**

- 6.066 If the Trust decides that the resident has disposed of capital in order to avoid a charge or to reduce the charge payable, the Trust will need to decide whether to treat the resident as having the capital (notional capital) and assess the charge payable accordingly; and then whether:
- a) it is realistic to attempt to recover the assessed charge from the resident bearing in mind that they may not have the means to pay the debt which will be accruing; or
  - b) if the asset was transferred not more than 6 months before the date the resident begins to live in residential accommodation, or while the resident is living in the accommodation, to use the provisions of Article 101A of the Health and Personal Social Services (Northern Ireland) Order 1972 to transfer the liability to the recipient of the asset for that part of the charges assessed as a result of the notional capital (see Annex I).

### **Diminishing notional capital**

#### **Calculation of the rate at which notional capital should reduce**

- 6.067 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.

*Reg. 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 of 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. Trusts also have an element of discretion over whether to take the value of a property into account (see 7.007).

### Property to be disregarded

7.002A 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.

*Schedule 4 para 1*

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

7.002B 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 his family (as defined at 7.004A) who
  - is aged 60 or over, or
  - is aged under 16 and is a child whom the resident is liable to maintain, or
  - is incapacitated.

*Schedule 4 para 2*

## **Disregard for the first 12 weeks of a permanent stay**

7.003A In the case of a resident who becomes a permanent resident on or after 22 April 2002 and who elects for the 3-month property disregard 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. This may not be their first permanent admission to permanent residential care.

*Schedule 4 para 22*

7.003B 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.

*Schedule 4 para 22*

7.003C The disregard applies irrespective of whether the resident was already in a care home as a self-funder before being provided with accommodation under Article 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972. This is because the legislation defines "resident" in this context as a person who is provided with accommodation under the Article 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972.

### **Meaning of "relative"**

7.004 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. step-parent
- H. step-son
- I. step-daughter
- J. brother
- K. sister

- L. grandparent
- M. grandchild
- N. uncle
- O. aunt
- P. nephew
- Q. niece
- R. the spouse, civil partner, or unmarried partner of any of A to K inclusive.

**Meaning of family**

7.004A 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"**

7.005 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:

- a) 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
- b) 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**

- 7.006 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 para 16*

### **Discretion to disregard property**

- 7.007 Where the Trust considers it reasonable to do so, they can disregard the value of premises not covered in paragraphs 7.002-7.006 in which a third party continues to live. Trusts will have to balance the use of this discretion with the need to ensure that residents with assets are not maintained at public expense. It may be reasonable, for example, to disregard a dwelling's value where it is the sole residence of someone who has given up their own home in order to care for the resident, or someone who is an elderly companion of the resident particularly if they have given up their own home.

*Schedule 4 para 18*

- 7.008 Where the Trust has decided to disregard the value of a property, it is left to the Trust to decide if and when to review that decision. It would be reasonable, for example, where the Trust has been ignoring the value of a property because a long term carer was living there, for the Trust 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**

- 7.009 The treatment of property will depend on whether the resident is 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 property will be valued according to the following paragraphs.

#### **Legal ownership**

- 7.010 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**

7.011 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 Trust agree that the value of the property, after taking into account any deductions in 6.011 (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**

7.012 Where the 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:

- a) the resident's ability to re-assign the beneficial interest to somebody else
- b) there being a market i.e. the interest being such as to attract a willing buyer for the interest.

*Reg. 27(2)*

7.013 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.

7.014 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 Trust is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained.

7.014A If ownership is disputed and a resident's interest is alleged to be less than seems apparent from the initial information, the Trust 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 Trust 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 amount to be taken into account as actual capital would be £4,500 because a further 10 per cent 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**

- 7.015 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 7.012 to 7.014).

### **Sale of Jointly owned property**

- 7.016 See the example at 6.062 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**

- 7.017 Where a resident owns a 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 capital level). It will then be for the resident to agree to pay the rental income (along with any other income) to the Trust to reduce the accruing debt).

## **SECTION 8 – INCOME OTHER THAN EARNINGS**

### **General**

#### **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 3 ways:
- a) taken into account in full;
  - b) partly disregarded; or
  - c) fully disregarded.
- 8.004 Paragraphs 8.005 to 8.074 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)
  - Child Support Maintenance Payments where the child is accommodated with the resident under Article 15 or 36 of the 1972 Order (see 8.037 for other cases).
  - Department of Enterprise, Trade and Investment 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 Pensions/Personal Pensions
- Refund of income tax
- Third party payments made towards meeting home fees (8.018, 8.063 – 8.065)
- Trust income (see Section 10)
- War orphan's pension

*Reg 15(1)*

### **Social Security Benefits**

8.006 The Social Security benefits listed below are taken fully into account. However, see 8.041A 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 3.016 for treatment of AA/DLA (Care) paid to temporary residents.
- Child Benefit where the child is accommodated with the resident under Article 15 or 36 of the 1972 Order (see 8.039 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 Trust managed accommodation not providing board and Housing Benefit is being paid to meet the accommodation charge. For other cases, see 8.039.
- Income Support/Pension Credit (but see paragraph 8.040 for exception)
- Industrial Death Benefit

- Industrial Injuries Disablement Benefit (IIDB) (8.008) – see also above and 3.016 for treatment of CAA and ESDA paid with IIDB
- Incapacity Benefit
- Invalid Care Allowance
- Jobseekers Allowance
- Maternity Allowance
- 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 3.016 for treatment of AA/CAA paid under the Workmen's Compensation Act

*Reg 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.

*Reg 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 3.016). REA is taken fully into account.

### **Pneumoconiosis, bysionosis 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 instalments – see 3.016 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 3.016 and 8.006 for treatment of AA.

### **Widow's Benefits (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 3.016 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.
- 8.013A 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 paragraph 8.024 to 8.031); or
  - b) gallantry award e.g. Victoria Cross Annuity, George Cross Annuity (fully disregarded – see paragraph 8.045);

### **Income from Investment Bonds**

- 8.014A 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 Trusts should seek their own legal advice when they arise. However, it is possible to offer some general advice.
- 8.014B 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 assurance, 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 sum not disregarded, exceed £16,000 (see also 6.002A, B and C).

## **Income from certain disregarded capital**

8.015 Income from capital will generally not be treated as income (see 6.039 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 3.011 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 a relative of the resident who is over age 60, under age 16 and whom the resident is liable to maintain, or incapacitated
- premises belonging to the resident which are occupied in whole or in part by a third party, where the Board 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 need 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 and payments for rates may be disregarded – see paragraph 8.038.

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**

8.016 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 (para 8.034).

### **Income from certain sub-lets**

8.017 When a resident sub-lets a part of his 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 8.030.

### **Third party payments made to meet higher fees**

8.018 Where a Trust agrees to place a resident in a more expensive home on the grounds that there is a third party willing to contribute towards the higher fee, the payments made by the third party should be treated as the resident's income and should be taken into account in full. Residents cannot use their own resources to pay for more expensive accommodation, i.e. act as their own third party.

8.019 Other payments made by a third party should be treated in accordance with paras 8.054 to 8.056.

### **Trust Income**

8.020 See Section 10.

### **Income partly disregarded**

#### **£10 disregard**

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

- Payments to victims of National Socialist persecution (paid under German or Austrian law)

*Schedule 3 para 11*

- Civilian war injury pension
- War disablement pension (8.023) – see also 3.016 and 8.006 for treatment of AA/CAA paid with WDP
- Payments from the Armed Forces Contribution Scheme to be established under Section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004
- War widow's and war widowers pension – but see 8.049 for War Widow's Special Payments

### **Overall disregard**

- 8.022 Where more than one payment qualifies for a £10 disregard, the amount disregarded overall is £10. The only exception is where 2 or more payments, which were due to be paid and therefore taken into account in different weeks, are in fact taken into account in the same week because it was not practical to take them into account for the weeks in which they were due to be paid.

*Schedule 3 para 31*

### **War disablement pension**

- 8.023 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 3.016 and 8.006 for treatment of AA and CAA.

### **Other disregarded sums**

- 8.024 Varying amounts are disregarded from the following types of income:
- Pension Credit Savings Disregard
  - Occupational pensions, personal pensions and payments from retirement annuity contracts (8.025A)
  - Certain charitable payments (8.054)
  - Annuity income from a home income plan (8.026)
  - Income from sub-letting (8.032)
  - Mortgage protection insurance policies (8.034)

- Income from certain disregarded capital (8.038)

### **Pension Credit Savings Disregard**

8.024A 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 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 of how much the savings credit payment is.
- Where a resident has qualifying income above the limit for receiving a savings credit reward (around £188.00 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 and is in receipt of qualifying income between £164.55 and £209.70 per week the savings disregard is made 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 and is in receipt of qualifying income in excess of £209.70 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 and has qualifying income above the limit for receiving a savings credit reward (around £277.00 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 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 B.

## **Occupational Pensions, Personal Pensions and Retirement Annuity Contracts**

8.025A 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 or civil partner. If the resident passes less than 50 per cent 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 to a married resident should cease to be disregarded is on death of the spouse or civil partner or divorce.

*Schedule 3 para 10A*

8.025B Where a spouse or civil partner is legally entitled to receive part of the occupational pension, personal pension or retirement annuity contract (e.g. by means of a Court Order) that part of the pension does not belong to the resident and should, therefore, not form part of his income. Fifty percent of the amount actually in payment to the resident should be disregarded in accordance with 8.025A.

### **Annuity income from home income plan**

8.026 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 the loan (or part 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.

8.027 In order to qualify for a 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. In this case, consider the question of liability of relatives – see Section 11.

8.028 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 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.

8.029 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 para 8.027). 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

8.030 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 2 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 Northern Ireland 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.

8.031 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 para 12*

**Income from sub-letting**

8.032 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 B. See also paragraph 8.017 for income from sub-letting part of the property which is not part of the living accommodation, e.g. garage or garden.

*Schedule 3 para 12*

### **Income from boarders**

8.033 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.

*Schedule 3 para 12*

### **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 £30 (i.e. £15) making a total of £35 of the £50 to be ignored.

### **Mortgage protection insurance policies**

8.034 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.

8.035 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.

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

8.037 The amount of income from such a policy which should be disregarded is the weekly sum of:

- a) the amount which covers the interest on the loan, plus

- b) the amount of the repayment which reduces the capital outstanding; plus
- c) the amount of the premium due on the policy.

*Schedule 3 para 19*

It should be remembered that Income Support/Pension Credit may be adjusted to take account of the income from the policy, so income previously disregarded under 3.009 or 8.039 may no longer be in payment.

### **Income from certain disregarded capital**

- 8.038 Where income is received from certain property of which the capital value is being disregarded (see 8.015), the income should be taken into account in full **less** any mortgage repayments, or payments of rates made during the same period as that in respect of which the income was received.

*Schedule 3 para 14(2)*

### **Income fully disregarded**

- 8.039 The following types of income are fully disregarded:

- See 3.016 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 (8.038).
- Supporting people payments made by the Northern Ireland Housing Executive to or on behalf of a resident for housing support charges of a kind specified in regulation 2 of the Housing Support Services Regulations (NI) 2003
- Certain charitable and voluntary payments (8.054).
- Child Support Maintenance Payments and Child Benefit, unless the child is accommodated with the resident under Article 15 or 36 of the 1972 Order.
- Child Tax Credit
- Christmas Bonus (8.042).
- Any payment from:
  - the Macfarlane Trust
  - the Macfarlane (Special Payments) Trust
  - the Macfarlane (Special Payments) (No 2) Trust
  - the Eileen Trust
  - the MFET Limited
  - the Fund (payments to non-haemophiliacs infected with HIV)

- the Independent Living (Extension Fund)
  - the Independent Living (1993) Fund and the Independent Living Fund (2006)
  - the Skipton Fund
  - the London Bombings Relief Charitable Fund
- (8.043)
- Age-Related Payments made under Article 9 of the Age-Related Payments (Northern Ireland) Order 2004 (S.I. 1987)
  - Disability Living Allowance (Mobility Component) and Mobility supplement
  - Dependency increases paid with certain benefits (8.044A)
  - Gallantry awards (8.045)
  - Housing Benefit – but see also 8.006
  - Income frozen abroad (8.046)
  - Income in kind (8.047)
  - Social Fund payments (including winter fuel payments)
  - Certain payments made to trainees (8.048)
  - War widows special payments (8.049)
  - Work expenses paid by employer and expenses paid to voluntary workers (8.052 and 8.053)

### **Income Support/Pension Credit paid for home commitments**

8.040 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. Payments may continue for up to 52 weeks.

8.041 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 the Social Security Agency sends to the resident.

*Schedule 3 para 26*

### **Christmas Bonus**

8.042 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 Pensions;
- War Disablement Pension;
- Incapacity Benefit or Severe Disablement Pension;

The Christmas Bonus is fully disregarded in assessing the charge.

*Schedule 3 para 22*

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

- 8.043 Payments from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Eileen Trust, the MFET Limited, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund and 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 (Extension and 1993 and 2006) Living Funds should cease when someone enters residential accommodation.

*Schedule 3 para 24*

**Dependency increases paid with certain benefits**

- 8.044A Dependency increases for adults can be paid with Jobseekers Allowance, Maternity Allowance, Incapacity Benefit, Severe Disablement Allowance, Retirement Pension, Carers Allowance and Unemployment 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, Carers Allowance and Unemployment Supplement (as above). 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 para 27A*

- 8.044B Child Tax Credit is paid in place of child dependency increases in claims for Job Seeker's Allowance, Incapacity Benefit, Retirement Pension, Carer's Allowance and Unemployment Supplement from 7<sup>th</sup> April 2003. Where Child Tax Credit is in payment, it should be disregarded in full, regardless of whether or not the child is accommodated with the resident,

*Schedule 3 para 27G*

### **Gallantry Awards**

8.045 Gallantry awards are:

- Victoria Cross Annuities
- George Cross Annuities

These payments are fully disregarded.

*Schedule 3 para 8*

### **Income frozen abroad**

8.046 Income paid outside the UK which cannot be transferred to the UK should be fully disregarded so long as it continues to be frozen outside the UK.

*Schedule 3 para 15*

### **Income in kind**

8.047 Income in kind means income received in the form of food, clothing, cigarettes etc. The value of such income is disregarded in full.

*Schedule 3 para 13*

### **Payments made to trainees**

8.048 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**

8.049 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 legislation listed in Annex G, are fully disregarded.

8.050 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 widowers' 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.

- 8.051 War widows and war widowers' special payments and analogous payments can normally be identified by the amount contained in the war widow's and war widowers pension order book. In cases of doubt, contact the Veterans Agency at Norcross, Blackpool, Lancs FY5 3TA, Tel 0800 169 2277. They will need to know the name and reference number (shown on pension book) of the war widow or widower.

*Schedule 3 para 35*

#### **Work expenses paid by employer**

- 8.052 Where a person who is in paid employment receives a payment from the employer in respect of expenses which are incurred in the course of the employment, that payment is fully disregarded. The payments must be for expenses incurred exclusively and necessarily in the course of work.

*Schedule 3 para 3*

#### **Expenses paid to voluntary workers**

- 8.053 Where a person works for a charitable or voluntary body or as a volunteer, and receives no other payment as a result of the employment, any payment in respect of expenses which are actually incurred is fully disregarded.

*Schedule 3 para 2*

### **Charitable and Voluntary payments**

#### **General**

- 8.054 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.

- 8.055 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.

*Reg. 22(7)*

- 8.056 Payments which are made regularly or are due to be made regularly are fully disregarded, with certain exceptions.

*Schedule 3 para 10 and 30*

- 8.057 SPARE

#### **Payments to meet higher fees**

- 8.058 Special rules apply to charitable or voluntary payments which are intended for and used to meet a home's fees where the fees for that home are higher than the amount the Trust would normally pay. These payments are intended to allow the resident some freedom of choice about where he wishes to live. See paras 8.018 - 8.019 for treatment of this income.

*Schedule 3 para 29-31*

## **Income treated as capital**

- 8.059 Certain forms of income are treated as capital – see 6.039 to 6.046 for details.  
*Reg. 22*

## **Notional Income**

- 8.060 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 Trust or to the homeowner by a third party to contribute towards the fees of a home (see 8.063)
- b) income which would be available on application (but see 8.066).
- c) income which is due but has not yet been paid
- d) income which the resident has disposed of where the Trust is satisfied that the resident has deprived himself of that income in order to reduce the charge payable for his accommodation.

*Reg.17*

Guidance on the factors to be considered is contained in the following paragraphs:

### **Actual and notional income**

- 8.061 If the resident's actual income is such that the full charge is assessed as being paid it will not be necessary to consider the question of notional income.

### **Treatment of notional income**

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

## **Payments by a third party**

- 8.063 Where a third party is making a contribution towards the cost of the accommodation the amount the third party is paying should be treated as the notional income of the resident. This is to ensure that payments are taken into account when assessing the charge.

*Reg. 17(6)*

- 8.064 Where a third party makes a payment directly to the Trust in respect of a resident's arrears of charges for residential accommodation it should not be treated as the resident's notional income and will not therefore need to be taken into account as available towards the resident's current charge. In order to avoid the payment being regarded as the resident's capital (see 6.045A), 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 Trust.

- 8.065 The remaining forms of notional income depend on the Trust being satisfied that the resident has deprived himself of that income in order to reduce the charge payable for his accommodation.

## **Income available on application**

### **General**

- 8.066 Subject to certain exceptions, income which the Trust is satisfied would be available to the resident if an application were made, but which has not yet been acquired, is to be treated as belonging to that resident.

*Reg. 17(2)*

### **Amount of income**

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

- a) income payable under a discretionary trust
- b) income payable under a trust derived from an award made in consequence of a personal injury where such income would become available on application but has not been acquired

*Reg. 17(2)*

- c) income from capital derived from an award of damages for personal injury which is administered by a court

*Reg. 17(2)*

- d) Working Families Tax Credit

- e) Disability Working Allowance

- f) Rehabilitation Allowance

Also income which would be fully disregarded should not be included as notional income, for example some Housing Benefit (but see 8.006 and 8.039), DLA (mobility) and refund of income tax.

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

*Reg. 17(2)*

- 8.069 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 Trust cannot assume are satisfied.

*Reg. 17(2)*

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

- a) Unclaimed district councillor's attendance allowance
- b) Unclaimed Social Security benefits (but not Severe Disablement Allowance)
- c) Occupational pension not claimed.

#### **Date taken into account**

8.071 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 Trust should:

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

*Reg. 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 Trust becomes aware of the possible entitlement on 30.9.03. As retirement pension can only be backdated a year from date of claim the Trust should only take it into account as income from 1.10.02.
2. The Trust 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 65<sup>th</sup> birthday his former employers state that he will be paid the entire pension due from the age 60. The Trust should take the pension into account from age 60, or from the date on which the resident becomes liable to pay charges for his accommodation, if later.

### **Personal Pensions and Retirement Annuity Contracts**

8.072 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 Social Security Agency will contact the pension provider for details of the income which could be payable where Income Support/Pension Credit is claimed. For IS/PC claimants Trusts should liaise with the Social Security Agency to obtain details. Where no income is claimed the Trust will need to seek the resident's permission to approach the pension provider to obtain details of the income

which could be received. This notional income should then be taken into account in the assessment of charges. The assumption of notional income from personal pensions and Retirement Annuity Contracts only applies to residents aged 60 or over.

*Reg. 17(2)*

### **Income due but not paid**

8.073 Any income which is due to a resident, but which has not been paid, is to be treated as belonging to the resident. This does not apply to:

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

*Reg. 17(2)*

8.074 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 (for example, because of a strike by pay clerks)
2. pension or grant which has ceased temporarily, for example due to a postal strike.

### **Deprivation of income**

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

*Reg. 17(1)*

#### **Example**

A resident is assessed as having to pay the full charge based on his income from retirement pension and occupational pension. When reviewing the charge the Trust find that he has sold his right to receive the occupational pension thereby reducing the charge he is assessed as having to pay. The Trust decides that this was done for the purpose of reducing the charge and the occupational pension is taken into account.

#### **Meaning of deprive**

8.076 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**

8.077 Where the resident appears to have deprived himself of income the Trust should consider the questions covered in the following paragraphs.

#### **Was it the resident's income?**

8.078 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?**

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

- a) he has been receiving or was due to receive; and
- b) would have continued to receive had he not relinquished or transferred it.

8.080 It is up to the resident to prove that he no longer has the income. If he cannot prove that the income has been disposed of the Trust should treat the resident as still possessing the actual income.

#### **Purpose of the disposal of income**

8.081 There may have been more than one purpose of the disposal of income only one of which is to avoid a charge, or incur 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**

8.082 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.

8.083 The Trust 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 Trust should bear in mind, however, that deprivation can only be considered for resources disposed of at any time. The six month restriction only applies to using the provisions of Article 101A of the Health and Personal Social Services (Northern Ireland) Order 1972 (see Annex I).

### **Conversion of income to a capital asset**

8.084 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 Trust should consider taking account of:

- a) the amount of the former income resource or
- b) 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 Trust 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 Trust 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 Trust decided that the resident had sold the right to receive the income for the purpose of reducing the assessed charge. The increase in the amount of tariff income (resulting from the sale of the right to receive an income) was £8 (i.e. £2,000 ÷ £250). A notional income of £2 per week was calculated by deducting the increase in tariff income (£8) from the original income payable under the annuity (£10).

### **Deprivation decided**

8.085 If it is decided that the resident has disposed of income in order to avoid a charge or to reduce the charge payable, the Trust will need to assess the charge payable using the resident's notional income.

*Reg. 17(1)*

8.086 If the resident is unable to pay the charge assessed using the notional income, the Trust should consider whether the provisions of Article 101A of the 1972 Order 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 I).

## SECTION 9 - EARNINGS

### What are earnings?

#### General

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 4 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.  
*Regs 10 and 13*
- any remuneration paid by, or on behalf of the employer to an employee who is temporarily unable to work because of illness or confinement.

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 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 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

*Reg. 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 (SSP), Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPA)**

9.007 The amount of SSP, SMP, SAP and SPA to be taken into account is the gross amount less:

- a) any income tax paid;
- b) any National Insurance employee's 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 Trust should ask the employer for clarification.

*Schedule 2 para 4*

**Period over which earning 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.

*Reg. 18(1)(a)*

### **Payments which are not for fixed periods**

9.009 Where a resident who works as an employed earner received 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 the Social Security Adjudication Officer will calculate a number of weeks for which Income Support/Pension Credit will be withdrawn. The Trust should work out the same number of weeks by dividing the payment by the amount of Income Support/Pension Credit normally in payment plus any disregards which would be applicable if the payment was a regular payment of earnings. The balance of the payment (if any) should be taken into account in the assessment in the final week.

*Reg. 18(2)*

#### **Example**

A resident receives a payment totalling £800.

He had been receiving Income Support/Pension Credit of £130 per week and would have been entitled to a weekly disregard of £20.

The Trust should divide the £800 by the amount of Income Support/Pension Credit in payment plus the disregard ( $£130 + £20 = £150$ ).  $£800 \div £150 = 5.33$

The £800 should be taken into account in the assessment for a period of 5 weeks at the rate of £150 (the Income Support/Pension Credit previously in payment plus the disregard).

In the 6<sup>th</sup> week the balance of the payment should be taken into account (i.e.  $£800 - (5 \times £150) = £50$ ).

In assessing the charge over these 6 weeks the Trust should remember that Income Support/Pension Credit will be withdrawn for the first 5 weeks and will be paid at a reduced rate for the 6<sup>th</sup> week.

## **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 rate for the Trust managed or independent sector home accommodation and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard rate). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.

*Reg. 18(1)(b)*

### **Example**

A resident is paying a charge (A) of £120; the standard rate (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 rate 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 5 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 contributions the resident is liable to pay
- half of the any sum paid to a personal pension scheme
- stock purchases
- transport costs, wholly related to the business

- stationery
- advertising

*Reg.11*

### **Assessing the weekly net earnings of self-employed earners**

- 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 by averaging the earnings over whatever periods 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.

*Reg. 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.

*Reg. 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 9.017 above, less the appropriate disregard.
- 9.017 Disregard £5 of the net weekly earnings unless the resident qualifies for a different disregard as follows:

*Schedule 2 para. 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 and:

- i. receives one of the following benefits:
- Disability Living Allowance (mobility or care components at any rate)
  - Disability Working Allowance
  - Mobility supplement
  - Severe Disablement Allowance

or

- ii. has a vehicle provided under Article 30(1) of the 1972 Order;

or

- iii. receives a grant under Article 30(3) of the 1972 Order

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 or 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 4 weeks,

or

- c) is over the qualifying age; and

satisfied one of the 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 Carer's Allowance.

*Schedule 2 para 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 para 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 para 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 para 15*

## SECTION 10 – TRUST FUNDS

This section does not apply to the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Eileen Trust, the Fund and the Independent Living Fund, the Independent Living (Extension) Fund or the Independent Living (1993) Fund. See paragraph 8.043.

### What is a trust?

10.001 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)).

10.002 Examples of capital which might be held on trust are:

- money awarded by a court for personal injury
- 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

10.003 Trustees may be:

- the Official Solicitor
- the Office of Care and 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.

10.004 Trustees' powers are governed by:

- a) the terms of any trust deed;
- b) the law of equity; and
- c) in Northern Ireland only –

the provisions of the Trustee Act (Northern Ireland) 1958; or

the administration of Estates Act (Northern Ireland) 1955;

in England and Wales only –

the provisions of the Trustee Act 1925, or the Administration of Estates Act 1925;

In Scotland only –

the Succession (Scotland) Act 1964.

### **Identifying a trust**

10.005 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**

10.006 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 (10.008-10.018); or
- b) the trustees have discretion to make payments of capital or income to him (10.019-10.022).

### **Information needed**

10.007 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**

10.008 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 own affairs. In these cases a receiver appointed by the Office of Care and Protection could call for the transfer on behalf of the beneficiary.

### **Information needed**

- 10.009 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**

- 10.010 If the beneficiary is absolutely entitled to capital, find out the value of the capital. Where a number of beneficiaries have 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.
- 10.011 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).
- 10.012 Some trusts provide for the beneficiary to become absolutely entitled to the trust capital on a specified date, for example on his 21<sup>st</sup> birthday. In these cases the beneficiary has a contingent interest. Once the contingency is satisfied, the beneficiary becomes absolutely entitled to the capital.
- 10.013 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.
- 10.014 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 may not be necessary to obtain a precise valuation of the trust.

### **Absolute entitlement to income**

- 10.015 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 10.017 for treatment of the income).

*Schedule 4 para 13*

10.016 A person who has a contingent interest in capital (as in paragraph 10.012) becomes absolutely entitled to receive the income from the capital on his 18<sup>th</sup> 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 10.015.

10.017 Where a person has absolute entitlement to income from a trust, the income he receives, or which would become available to him on an application being made, should be taken into account in full in the assessment. Where the resident does not receive income to which he has absolute entitlement, but the income would become available to him upon application being made, he should be treated as possessing that income as an actual income. (See Section 8 – Income). In order to treat the income as an actual resource, you must be able to identify the income which should be paid, and to establish that there is nothing which prevents payments being made, such as a legal charge against the fund.

*Reg. 17(1)*

### **Absolute entitlement to capital and income**

10.018 Where the beneficiary has absolute entitlement to capital and income, and is being treated as possessing the capital sum, the income derived from the capital should be treated as capital, and not taken into account as income in the assessment.

*Reg. 22(4)*

## **Discretionary trusts**

### **Information needed**

10.019 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**

10.020 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)).

10.021 Payments from a discretionary trust are effectively voluntary payments. Treat them in accordance with the normal rules for the treatment of voluntary payments (paragraphs 8.054 to 8.058).

- 10.022 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 (paragraph 8.050 to 8.056).

## **Awards for personal injury**

### **Information needed**

- 10.023 Obtain confirmation that the capital held in trust is a lump sum payment of:
- an award for injury or death (including vaccine damage)
  - damages under the Fatal Accidents (Northern Ireland) Order 1997.
- 10.024 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**

- 10.025 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.
- 10.025A 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.
- Reg. 21(2) and Schedule 4 para 10A*

### **Treatment of income**

- 10.026 The following periodical payments are disregarded.
- Payment from a trust whose funds are derived from a payment made in consequence of any personal injury
  - Payments made under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury, or from funds derived from such a payment, in consequence of any personal injury

- Payments received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury  
*Reg. 15(2) and Schedule 3 para 10*

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

## SECTION 11 – LIABILITY OF RELATIVES

### General

- 11.001 Under Article 100 of the 1972 Order, a man is liable to maintain his wife and a woman is liable to maintain her husband. This means that where a person's accommodation is provided at public expense by a Trust, the Trust may ask the spouse (i.e. the liable relative or "LR") to refund all or part of the expenditure
- 11.002 Unmarried couples are not legally liable to maintain one another even though they live together as husband and wife. The liable relatives provision does not extend to civil partnership.
- 11.003 Married couples are also liable to maintain one another under Social Security legislation. This means that where Income Support/Pension Credit is in payment to a resident, if the Trust pursue maintenance from a spouse and it is paid, the Social Security Agency will merely reduce the Income Support/Pension Credit which is in payment so reducing the amount the Trust can charge the resident back down to the original amount. Therefore, it is not worth the Trust pursuing maintenance where Income Support/Pension Credit is in payment to the resident.
- 11.003A If the SSA has not obtained a contribution and they are not planning to approach the LR:
- Make a calculation in the normal manner.
  - Take into account the fact that many of the cases involve pensioners.
  - Consider the cost effectiveness of any action to pursue liability. Trusts should take a reasonable approach when dealing with these cases and avoid causing distress to the couple.
- 11.004 As a general principle, where it is evident that the liable relative is not in a position to make a contribution no action is necessary. Specifically, the income and expenditure of the spouse should be taken into account when a liable relatives contribution is being sought. The liable relative should not experience hardship as a result. For example, the spouse should be left with enough income to be able to live on, which means with being left with income above means tested benefits such as Income Support/Pension Credit, housing benefit, council tax benefit and tax credits. In addition, reasonable expenses should be allowed for the partner such as visits to spouse in care, expenses to maintain the home and any other expenses arising from serious or prolonged illness, infirmity or disability.
- 11.004A Trusts' standard policies on liable relatives contributions should be in writing and discussed clearly with married partners who are being asked for a contribution.

11.004C In seeking liable relatives contributions from carers, Trusts may wish to exercise discretion and sensitivity. Some of these carers may struggle as a result to maintain an adequate standard of living and may only have their state pension

### **Seeking payments from a liable relative**

11.005 Where it appears to be appropriate to pursue liability, Trusts may ask a spouse to refund part or all of the Trust's expenditure in providing residential accommodation for his/her husband or wife. Trusts should note that this does not mean that a Trust can demand that a spouse provide details of his/her resources. Trusts should use tact in explaining to residents and spouses the legal liability to maintain and point out that the extent of that liability is best considered in the light of the spouses' resources.

11.005A A Trust can negotiate a liable relative payment even if the liable relative does not wish to supply details of his or her own resources. In the absence of details Trusts should not charge the partner for any of the care unless negotiation has taken place.

11.006 Trusts should proceed as follows:

1. assess the ability of the resident to pay based solely on his/her own resources. This establishes the charge the resident is able to pay without assistance from the liable relative;
2. if the resident satisfies the Trust that he/she is unable to pay for his/her accommodation at the standard rate, the Trust decides whether it is worth pursuing the spouse for maintenance towards the shortfall;
3. If it is worth pursuing the spouse for maintenance, consider in each case what would be appropriate for the spouse to pay by way of maintenance. This will involve discussion and negotiation with the spouse, and will be determined to a large extent by his/her financial circumstances in relation to his/her expenditure and normal standard of living. In the Department's view, it would not be appropriate, for example, to necessarily expect spouses to reduce their income to Income Support/Pension Credit levels in order to pay maintenance;
4. ultimately, only the courts can decide what is an appropriate amount of maintenance to pay. When negotiating maintenance payments with spouses the Trust should therefore consider whether the amount being sought would be similar to that decided by the courts. Trusts should consider court action as a result.

### **Liable Relative payments**

11.007 A liable relative payment (LRP) is:

- most payments made by a person who is liable under the 1972 Order to maintain a resident; and
- certain payments made by a person who is not liable to maintain the resident in particular, payments from a divorced spouse. These would normally be payments made under a Court order.

**Payments not treated as liable relative payments (LRPs)**

11.008 Certain payments are not treated as LRPs, although they are made by a liable relative. These are:

- certain payments under a separation or divorce settlement (11.009)
- the first £250 of payments made as a gift (11.010)
- payments made to a third party in respect of the resident if it is unreasonable to take these into account (11.011)
- payments made to the resident in respect of a third party if it is unreasonable to take these into account (11.013)
- any Child Support Maintenance Payment (see 6.028, 8.005 and 8.039).

**Payments under separation or divorce settlement**

11.009 Payments which arise from a property settlement following a separation or divorce are treated as capital, not LRPs. These payments represent the resident's share of the financial assets of the couple, e.g. the resident's share of the value of the matrimonial home.

*Reg. 29*

**Gifts from liable relatives**

11.010 The first £250 of any payment made as a gift is treated as capital. Any balance over £250 is taken into account as a non-periodical LRP (11.020). If two or more payments are made in one 52 week period (starting on the date the first payment is made), only the first £250 paid during that period is treated as capital. Any payment over £250 in that 52 week period is treated as a non-periodical payment.

*Reg. 29*

**Example**

Resident receives a gift from his wife of £300 on his birthday, 12 September 2003, £250 is treated as capital, and £50 treated as an LRP.

His wife gives him £150 for Christmas 2003. The whole amount is treated as an LRP.

On 9 September 2004 his wife gives him £200 for his birthday. The whole amount is treated as an LRP. The 52 week period ends on 11 September 2004.

His wife gives him £200 for Christmas on 15 December 2004. The whole amount is treated as capital and a new 52 week period begins on 15 December. He receives £100 on 15 April 2005. £50 is treated as capital and £50 as an LRP. Any further gifts received during the period 15 December 2004 to 14 December 2005 are treated as LRPs.

### **Payments to a third party in respect of the resident**

11.011 These payments are treated as LRPs unless there are grounds for thinking it would be unreasonable to do so. It might, for example, be unreasonable to treat the following as LRPs:

- payments direct to a TV rental company for the resident to have his own television
- payments to a telephone company to pay a telephone bill
- payments to a mail order company for clothing.

11.012 Where it is decided that it would be unreasonable to treat a payment as an LRP, treat it as a voluntary payment in accordance with 8.054 to 8.058.

*Reg. 29*

### **Payments to the resident in respect of a third party**

11.013 These payments are treated as LRPs unless it appears unreasonable to treat them as possessed by the resident, e.g.:

- maintenance payments in respect of a child paid to the resident to pass on to that child or the person caring for the child
- payments intended for the maintenance of a property occupied by an elderly relative.

11.014 In these cases, decide whether the payment should be treated as possessed by the resident or by the third party. If it is treated as possessed by the resident, take it into account as an LRP. If it is treated as possessed by the third party, it will not fall to be assessed as the resident's income.

*Reg. 29*

### **Treatment of liable relative payments**

11.015 An LRP is either a periodical payment or a non-periodical payment.

### **Periodical Payments**

- 11.016 A periodical payment is one which is made or due to be made at regular intervals. Such payments will normally be made under:
- a) a court order; or
  - b) an agreement between the LR and:
    - i. the resident;
    - ii. the Department for Social Development (and associated Agencies, SSA, CSA); or
    - iii. the Trust
- 11.017 Payments which are made weekly are taken into account in full at the weekly rate of the payment.
- 11.018 Where a payment is due to be made at intervals other than a week, calculate the weekly amount, e.g. calendar monthly payment – multiply by 12 and divide by 52.
- 11.019 Where a payment is due to be made at a weekly amount, but is paid in a lump sum at irregular intervals, divide the lump sum by the weekly amount which should be paid and take it into account at the weekly rate for the appropriate number of weeks.

*Reg. 31*

### **Non-periodical payments**

- 11.020 Where the resident receives a payment from a liable relative which is not made for an identifiable period the Trust should calculate the period over which to take the payment into account as follows:

### **Income Support/Pension Credit in payment**

- 11.021 Where a resident, who is getting Income Support/Pension Credit, receives an LRP which is not for a set period the Social Security Adjudication Officer will calculate a number of weeks for which Income Support/Pension Credit will be withdrawn. The Trust should work out the same number of weeks by dividing the payment by the amount of Income Support/Pension Credit normally in payment plus any disregards which would be applicable if the payment was a regular payment of earnings. The balance of the payment (if any) should be taken into account in the assessment in the final week.

*Reg. 18(2)*

### **Example**

A resident receives a payment totalling £750.

He had been receiving Income Support/Pension Credit of £130 per week and would have been entitled to a weekly disregard of £15.

The Trust should divide the £750 by the amount of Income Support/Pension Credit in payment plus the disregard (£130 + £15 = £145).  $£750 \div £145 = 5.17$ .

The £750 should be taken into account in the assessment for a period of 5 weeks at the rate of £145 (the Income Support/Pension Credit previously in payment plus the disregard).

In the 6<sup>th</sup> week the balance of the payment should be taken into account (i.e.  $£750 - (5 \times £145) = £25$ ).

In assessing the charge over these 6 weeks the Trust should remember that Income Support/Pension Credit will be withdrawn for the first 5 weeks and will be paid at a reduced rate for the 6<sup>th</sup> week.

### **Income Support/Pension Credit not in payment**

- 11.022 Where Income Support/Pension Credit is not in payment and a resident receives a payment for a period which cannot be identified (and this is the only payment received from an LR) the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard rate and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard rate). 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.

#### **Example**

A resident is paying a charge (A) of £120, the standard rate (B) is £250

He receives a payment (C) of £750.

The number of weeks over which the payment should be taken into account is calculated as follows:

$$C \div (B - A) = 5.77 \text{ weeks}$$

The resident therefore pays the standard rate of £250 for 5 weeks.

In week 6 the resident will have £100 left from the payment (having used £130 (B-A) per week for the 5 weeks to meet the extra charge). This should be used to calculate the charge for this week.

### **Periodical and non-periodical payments**

- 11.023 Where a resident receives a periodical and a non-periodical payment at the same time and the weekly amount of the periodical payment is less than the difference

between the standard rate and the amount he would be liable to pay if he did not receive any payments from the LR, the payment should be taken into account for a period calculated by dividing the sum received by the difference between the standard rate and the amount the resident had previously been paying.

**Example**

A resident receives a payment of £500 (A) from an LR

He normally receives a weekly payment of £50 (B) from the LR

He has other weekly income of £75 (C)

The standard rate for the accommodation is £250 (D)

The personal expenses allowance is (e.g.) £15 (E)

The resident normally pays £110 (F)

If no weekly LRP was received the resident would pay £60 (C-E)

The normal weekly amount of LRP is less than this so the calculation for the number of weeks over which the non-periodical payment is to be taken into account is as follows:

$$A \div (D - F) = 3.57 \text{ weeks}$$

So, the resident pays the full standard rate for 3 weeks. This will have used up £420 of the payment (the difference between what he was paying and the standard rate i.e. £140, for 3 weeks).

In the 4<sup>th</sup> week the resident will have £80 left of the LRP. This will be taken into account along with his other income in the assessment of his charge in the final week.

11.024 Where the weekly LRP is equal to or more than the difference between the standard rate and the charge the resident would be assessed as paying if he received no LRPs, then the non-periodical payment should be treated as capital.

*Reg. 34(1)*

**Example**

A resident receives a non-periodical payment of £500

He normally receives a weekly LRP of £100

He receives other income of £75

The standard rate is £250

The personal expenses allowance is (e.g.) £15

The resident normally pays a charge of £160

If there was no weekly LRP the resident would pay a charge £60

As the weekly LRP is more than the charge that would be made if the resident did not receive the LRP, the £500 non-periodical payment is treated as capital.

11.025 If an amount has been treated as capital in 11.024 and the periodical LRP later ceases to be paid, the non-periodical payment ceases to be treated as capital and the weekly income should be calculated as in 11.021 or 11.022 above.

## SECTION 12 - STUDENTS

### General

- 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 by the student's local Education and Library Board (ELB), according to the provisions in force at the start of the academic year. 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 Trust should ask the ELB 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.

*Reg. 36(2)*

Note: Grants which are awarded under the current Students Awards Regulations (Northern Ireland) 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 ELB may decide that the student's parent or 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 or civil partner and the actual grant payable will be reduced by the amount of assessed contribution.

*Reg. 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 amount of standard maintenance grant is specified in Schedule 7 to the current Students Awards Regulations (Northern Ireland) and the figure should be obtained from the ELB each year. Any other part of the grant should be ignored.

*Reg. 36(1)*

- 12.006 Any assessed contribution from the resident's parents or 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.

*Reg. 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.

*Reg. 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 in to account is equivalent to the amount of standard maintenance grant which would have been paid, had a maintenance grant been payable. Ask the ELB to provide details of the relevant standard maintenance grant in a case such as the resident's.

*Reg. 37(1)*

- 12.010 Any amount of covenant income above the figure of the standard maintenance grant should be ignored.

*Reg. 37(1)*

#### **Disregards**

- 12.011 No part of the grant or covenant income should be disregarded as a charitable or voluntary payment (para 8.050 et seq).

*Reg. 38*

## **Student loans**

12.012 Student loans are administered by the Student Loans Company Ltd, and are paid out of funds to which the Department of Education for Northern Ireland contributes.

### **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:

- a) below post graduate level (with the exception of the Post Graduate Certificate in Education) but above:
  - i. a general certificate of education (Advanced level)
  - ii. Scottish Higher level
  - iii. BTEC or Scot VEC 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.

*Reg.39*

12.015 The maximum amount of student loan will depend on:

- a) where the student is studying (London or elsewhere);
- b) whether the student has reached the final year of the course.

The maximum student loan can be found by contacting the Student Loan Company Ltd, 100 Bothwell Street, Glasgow G2 7JD tel 0141 306 2000.

### **Calculation of weekly income from student loans**

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

- a) if the student is in the final academic year of the course, or if the course is only 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.

- b) 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.

*Reg. 39*

**Amount to be disregarded**

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

*Reg. 39*

**Access funds**

- 12.018 Access funds provided by the Department of Education for Northern Ireland are intended for the relief of hardship, where a student might be prevented by financial considerations from starting or completing a course. The funds for students attending Colleges of Further Education are administered by the relevant ELB, otherwise they are administered by the educational institution attended by the student. Payments are made by lump sum, regular weekly cash payments, or by payment in kind and 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.

*Reg. 40(1)*

- 12.020 Payments made, or due to be made, at irregular intervals should be treated as capital.

*Reg. 40(2)*

## **SECTION 13 – TRANSITIONAL PROVISIONS**

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.

HSC should retain copies of the previous Section 13 guidance to refer to should any resident query his past assessments.

**ANNEX A**

**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	£18,500	£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
Above £23,250		Standard Rate Payment

**SOCIAL SECURITY BENEFITS RATES**  
(Weekly rates unless otherwise shown)

**ANNEX B**  
**RATES      RATES**  
**2010      2011**

**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
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**EARNINGS RULES**

Permitted Work Earnings Limit	93.00	95.00
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**INCAPACITY BENEFIT**

Long-term Incapacity Benefit	91.40	94.25
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**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	99.65	103.75
Pensioner (enhanced) Couple	99.65	103.75
Pensioner (higher) Couple	99.65	103.75
Disability Single	28.00	28.85
Couple	39.85	41.10

**Capital Limits**

Upper limit	16,000	16,000
Amount disregarded	6,000	6,000
Child's limit	3,000	3,000
Upper limit of RC/NH	16,000	16,000
Amt disregarded of RC/NH	10,000	10,000
Upper limit o/60s	16,000	16,000
Amount disregarded (partner 60 or over)	6,000	6,000

**Deemed Income**

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

**Expenses for subtenants**

Fixed Rate	20.00	20.00
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**PENSION CREDIT**

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

**Amendment April 2011**

Capital		
Amount disregarded – care homes	10,000	10,000
Deemed Income		
£1 for each £500 or part thereof in excess of the above amounts		
Housing Costs		
Deduction 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 £122.00	7.40	9.40
-£122 - £179.99	17.00	21.55
-£180 - £233.99	23.35	29.60
-£234 - £309.99	38.20	48.45
-£310 - £386.99	43.50	55.20
-£387 and above	47.75	60.60
Amount for claimant and first spouse in a polygamous marriage	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) plus 50% of the balance of the charge	20.00	20.00
Deductions for direct payments, arrears of housing, fuel, and fine default	3.30	3.40
Maximum rates recovery of overpayments		
-ordinary overpayments	9.90	10.20
-where claimant convicted of fraud	13.20	13.60
<b>RETIREMENT PENSION</b>		
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	No change	3.1%
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**SEVERE DISABLEMENT ALLOWANCE**

Basic rate	59.45	£62.95
<b>Age-related addition (from Dec 90)</b>		
Higher rate	15.00	13.80
Middle rate	8.40	7.10
Lower Rate	5.45	5.60

**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

## **PENSION CREDIT (for information only)**

Pension Credit is an income-related benefit for people who have reached the minimum qualifying age that provides, or contributes to, a guaranteed level of income 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 the age at which an individual may qualify visit [www.dsdni.gov.uk/index/ssa/benefit\\_information/a-z\\_of\\_benefits/ssa\\_retirement\\_pension/changes\\_to\\_pension\\_age\\_for\\_women](http://www.dsdni.gov.uk/index/ssa/benefit_information/a-z_of_benefits/ssa_retirement_pension/changes_to_pension_age_for_women)

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 2010, 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 or over can also be rewarded for some of their savings and income they have for their retirement. It gives pensioners an 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 your local Pension Service office.**

**PAYMENT 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 10 April 2006<sup>1</sup>

<b>Type of Accommodation</b>	<b>Period in Hospital</b>	<b>Income Support/Pension Credit</b>	<b>Retirement Pension</b>
All residents in Trust managed 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 <sup>2/3</sup>	From 10 April 2006 ('A' day) benefit will no longer be reduced to the hospital personal allowance. Where a reduced rate of benefit is in payment prior to 'A' day benefit will be restored to the full rate automatically.	From 10 April 2006 benefit will no longer be reduced to a personal requirements rate. Benefit will be restored to full rate from the first day of the benefit week on, or after, 10 April 2006.

(1) 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 down rated after 52 weeks under the previous rules will have had their benefit reinstated from the payday on or after 10 April 2006.

2. This will be the position for the majority of residents. However, there are different provisions for residents who have dependants.

3. The 28 day linking rules will also be abolished from 10 April 2006

(a) 4. AA and DLA (Care component) will continue to be withdrawn after 4 weeks in hospital, which and this may have an impact on some self-funders and full fee payers.

## **THE TREATMENT OF COUPLES IN CLAIMS FOR INCOME SUPPORT/PENSION CREDIT (for information only)**

While Trusts 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.

### **Temporary Residents**

Where the couple are temporarily separated as a result of one being admitted to residential accommodation they will 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 temporarily in different residential accommodation or the same residential accommodation 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 Job Centre 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 permanently to the same residential accommodation, the Job Centre Plus/Pension Service Adjudication Officer will have decided whether to assess them as a couple or separately.

A married or unmarried couple or civil partners 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 are considered to be 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 accommodation they may be considered to be the same household. However, there may be exceptions, e.g. where one partner lives in a nursing unit and the other in a residential unit, they might be said to live in separate households

If the Jobcentre Plus/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.

**ANNEX F**

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

**AA/DLA (Care May be paid to residents on the following basis:**

TYPE OF RESIDENT	EFFECT ON AA/DLA (Care )
Residents receiving HSC support towards their fees (excluding help with free nursing care (FNC) – see below).	Payable for the first 28 days (if the person was already entitled to AA/DLA (Care) before admission to residential accommodation).
Residents who do not get help with fees from the HSC, other than for FNC 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 Trust, 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.
Receipt of free nursing care by anyone of any age in a care home.	Continue to receive AA and DLA (care) for as long as they satisfy the conditions of entitlement.

***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).***

Note:

Residents who are not receiving HSC funding, other than for FNC, who have not previously claimed AA/DLA and who make a successful claim will be able to continue to receive it while their funding arrangements remain the same. The HSC may wish to advise and/or assist new residents to make claims and advise self-funding residents of the October

2003 changes whereby receipt of Income Support, income based Jobseekers Allowance or Pension Credit no longer affects their entitlement to AA/DLA.

The withdrawal of AA/DLA 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 receive HSC funding, and have AA/DLA withdrawn, keep underlying entitlement to it. The HSC 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.

**LEGISLATION FOR PAYMENTS OF WAR WIDOWS SPECIAL PAYMENTS**

- a. the Naval and Marine Pay and Pensions (Special War Widows 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 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 19 December 1881;
- i. the Royal Warrant on 27 October 1884;
- j. the dispensing Order by His Majesty of 14 January 1922.

***Value of National Savings Certificates***

The link below will allow access to both a calculator and tables to calculate the value of National Savings Certificates.

<http://www.nsandi.com/products/ilsc/calculator.jsp>

## **ARTICLE 101A OF THE HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972**

### **GENERAL**

- 1.1 Article 101A was inserted in the Health and Personal Social Services (Northern Ireland) Order 1972 by Article 10 of the Health and Personal Social and Public Health (Northern Ireland) Order 1986. It provides the power (delegated to Hsc ) to recover from a third party any outstanding balance between the assessed charge for residential accommodation provided or arranged under either Article 15 or 36 of the 1972 Order and the amount which the Trust receives from the resident for that accommodation, where a person has knowingly disposed of assets in order to reduce his liability to pay for the accommodation.
- 1.2 The Article came into operation on 1 April 1993 for new residents on or after that date, and on 12 April for existing residents at 31 March 1993. It cannot be applied retrospectively for people already accommodated in residential care and nursing homes before 1 April 1992.

### **Deprivation of assets**

- 2.1 For the provisions of Article 101A of the 1972 Order to apply, the board must be satisfied that a resident has transferred an asset to another person with the intention of avoiding charges for the accommodation. The transfer must have taken place no more than 6 months before the Trust arranged admission to residential accommodation (or 6 months before resumption of occupation in the case of a resident who has been absent from such accommodation), or the asset is disposed of while the resident is actually living in the accommodation. Also, the resident must either have received no consideration for the transfer or any consideration received was less than the value of the asset. The 6 month rule does not apply where a resident is self-funding in an independent sector home; has not been assessed; nor had their replacement arranged by a Board.

### **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 power conferred by Article 101A can be used to make the daughter liable for her father's charge.

A resident sold his right to receive an income of £5,000 a year for a single payment of £200, with the intention of avoiding a charge for accommodation. As the return for the transfer was less than the value of the asset, the powers in Article 101A can be used.

A resident who paid his own accommodation for 2 years gave £20,000 to his daughter in March, and continued to self-fund until December. The resident then approached the Board for support. In such a case the 6 month rule does not apply – i.e. charges cannot be recovered from the daughter.

### **Assets to be considered**

- 2.1 The Trust should only consider using the power conferred by Article 101A of the 1972 Order if the asset disposed of is one which would have been taken into account for the purposes of assessing the charge.
- 2.2 The value of any asset, other than cash, shall be the amount which would have been realised at the time of transfer, had the asset been sold 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 of Resources Regulations, see 6.011).

### **Transfer of liability**

- 2.4 The maximum 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.

#### **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 any debt secured on the property have been allowed for, the value of the property is assessed as £40,000. 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.

## CHARGING FOR RESIDENTIAL ACCOMMODATION – RECORD OF AMENDMENTS

Amendments will be issued periodically and will be numbered serially. When the amendment has been put in its proper place the appropriate boxes should be initialled and dated.

Serial No.	Initials	Date	Serial No.	Initials	Date
1	Incorporated		30		
2	Incorporated		31		
3	Incorporated		32		
4	Re-print	September 1995	33		
5	✓	April 1998	34		
6	✓	April 1998	35		
7	✓	April 1998	36		
8		April 1999	37		
9		March 2000	38		
10		June 2000	39		
11		April 2002	40		
12	Re-print	August 2002	41		
13	DL	May 2006	42		
14	DL	May 2007	43		
15	JBN	April 2008	44		
16	JBN	May 2009	45		
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Charging for Residential Accommodation Guide is also available on the Department's website:

<http://www.dhsspsni.gov.uk/index/hss/ec-community-care/ec-residential-accommodation.htm>