Draft Proposal for Members’ Bill: John Swinburne

To Abolish the Inclusion of a Person’s Home in the Financial Assessment to Pay for Long-term Care

A Consultation Paper

Down the river?

John Swinburne MSP
SSCUP MSP for Central Scotland

September 2005
ISAIAH 10 Verses 1 – 3

1. Woe to those who make unjust laws; to those who issue oppressive decrees,
2. To deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless.
3. What will you do on the Day of Reckoning?
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GLOSSARY

FPNC Free Personal and Nursing Care
PEA Personal Expense Allowance
DPA Deferred Payment Agreement
SPH Single Pensioner Household
PH Pensioner Household
“The purpose of this Bill is very simple. Only 4% of senior citizens find themselves faced with the unpalatable reality that they lose their home to pay for their residential care. However, the other 96% of senior citizen homeowners have a niggling fear that they may, in the future, fall ill and find themselves facing this harsh reality which masquerades as ‘free home care for the elderly’ and they too could have their home taken from them by ‘the state’. This Bill will restore peace of mind and genuine respect to every senior citizen homeowner in Scotland.”

John Swinburne MSP

Introduction

The suggestion that people should take responsibility for the funding of their care in old age was only expressed in general terms prior to the last quarter of last century, when two planks of government policy came into direct conflict.

Home ownership in Scotland stood at approximately 30% in 1975 but this more than doubled by 1997 under the ‘Right to Buy’ introduced by the Tories and opposed but eventually embraced by the Labour Party.

The practise of means testing when providing social care has resulted in increasing numbers of older people being faced with the prospect of having to sell their home to pay for residential care.

The Royal Commission on Long-Term Care for the Elderly, chaired by Professor Stuart Sutherland was set up in 1998 by the Labour Government to recommend “a fair funding system”.

The Commission found a system which was “particularly characterised by complexity and unfairness in the way it operates”. It stated that the system of state provision for long term care, based on means testing, was flawed.

The Commission considered removing the domestic home from all assessments of capital, leaving a “solely income-based means test” similar to that which operates in the United States, which has a means test with a low income limit, but does not take the value of the house into account.

When the Scottish Executive responded to the report of the Commission, it acknowledged that:

“One of the great worries facing older people is that of selling their home to pay for care. We fully recognise their concerns and will take steps to reduce their uncertainty and distress.”

(Scottish Executive, 2000)
As a Nation we can no longer countenance standing aside while aware of the emotional and financial disadvantages elderly people face when they reach a point when they can no longer care for themselves and have to reconcile to the fact that they need to enter residential care.

The trauma of leaving their home and of losing the opportunity to pass it on to their family is a bitter pill to swallow, particularly when you consider the lifelong contribution that they have made to our society.

As legislators, it is imperative that we examine the laws which we pass from the perspective of the individual, and how they impact upon their lives. Elderly people do not regard their house as capital or even bricks and mortar. Rather, they see this asset as their home, which they worked hard throughout their lives to pay for in order to enjoy their retirement and ultimately pass it on to their family.

I am surprised at the number of people who do not realise that their home could be in jeopardy should they no longer be able to cope on their own and find themselves allocated to a residential home.

This issue was top of my list of priorities when I started the Scottish Senior Citizens Unity [SSCUP] Party just prior to the 2003 election.

This must have touched a raw nerve among the electorate because not only did I save my deposit against Jack McConnell in the Motherwell and Wishaw constituency, I also was elected as an MSP for the Central Region in Scotland for the SSCUP after a mere eleven weeks of campaigning.

Today, at long last, I am able to launch a members bill ‘To abolish the inclusion of the capital value of a person’s home in the financial assessment to pay for long term care’ It has taken over two years to obtain the financial details required to enable me to submit this to the Scottish Parliament and I am indebted to Professor Arthur Midwinter of the Institute of Public Accounting Research of
the University of Edinburgh whom I commissioned to provide an analysis of the financial implications of my proposal to the public purse. He also outlines in clear graphic terms exactly how the current system unfairly disadvantages the most vulnerable senior citizens in our society. This document contains extracts from his report with full details of his conclusions.

The Scottish Executive should be rightly proud of the improvements which they brought about by the partial implementation of the recommendations of the Royal Commission on Long Term Care for the Elderly, including Free Personal and Nursing Care, but sadly the continuing sale of elderly peoples homes to pay for their residential care is the most unacceptable situation which faces senior citizens at a time in their lives when they are at their lowest ebb.

The only concession from the Executive so far is that a care home resident does not have to sell their home to pay for their care immediately because their home can now be signed over to the Local Authority, where under the ‘Deferred Payment Agreement’ [DPA] scheme, it will not be sold until after the owner has died.

This year we have all celebrated the 60th anniversary of the ending of World War II.

It is ironic to think that many of those who are having their homes sold by the state to pay for their residential care are among the survivors of that six year conflict.

What a shame on our nation and on each of us as individuals who tolerate this injustice!

John Swinburne MSP
September 2005
Proposal

A proposal for a Bill to disregard the value of a person’s home in the financial assessment undertaken by local authorities to establish contributions towards the cost of residential accommodation placements

Means-testing is not new as local authorities have been expected to charge the full economic cost for their own residential homes since 1948, subject to an assessment of a resident’s means. The inclusion of a person’s primary home in the capital assessment has, however, greater significance in today’s world than it did in 1948. People have taken advantage of the greater financial freedom which was offered to them from the 1980s onwards which included the ‘Right to Buy’ initiative, cheaper mortgages and the greater availability and acceptability of credit. The 2001 Census showed that over 65% of the population now has owner-occupier status.

Increasing the capital disregard limit of £19,500 – the amount of capital people can have without being required to pay care home fees - in line with the average house price, currently over £115,000, was originally considered as one solution, but this has not proved feasible. I am therefore proposing to simply exclude the domestic home from all assessments of capital, similar to an option considered by the Royal Commission on Long-Term Care for the Elderly, chaired by Professor Stewart Sutherland, which was an income-based means-test only.

I will also show that the impact of my proposal would be most beneficial to low-income property owners, with modest financial assets. The current arrangements could be seen to discriminate in favour of wealthy households which can meet the cost of care from income without having to sell their homes, and against homeowners with low or modest incomes in retirement.
How to respond to this consultation document

I would very much welcome all those who may be affected by the current legislation and those who work within organisations and institutions associated with the elderly to peruse and respond to this consultation. There is a list of questions at the foot of this page that may help you to formulate your response. I would be grateful if you could respond by 12th January 2006 to the postal or e-mail addresses below.

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Further copies of this consultation paper may be obtained by contacting John Swinburne by post or e-mail at the above addresses.

“Under the Code of Practice on open government, responses will be made available to the public, unless respondents ask for their comments to remain confidential.”

“To help informed debate on the matters covered by this paper and in the interests of openness, the responses submitted on this consultation document will be made public. It will be assumed that responses can be made public unless the respondent indicates that his or her response is confidential.

Confidential responses will nevertheless be included in any summary or statistical analysis, which does not identify individual responses.”

Questions

1. What would the benefits be of disregarding the house as a capital asset in assessing financial payments by individuals for long term care?

2. What would be the disadvantages?

3. Are there any savings that would arise from the implementation of this proposal?

4. What would be your reasons for this proposal to be pursued?

5. Are there any other comments you wish to make?
EXECUTIVE SUMMARY
‘Funding of Residential Care For the Elderly Memorandum by Professor A Midwinter’

1. Recent statistics on care home residents show a stable pattern of around 34,000 residents in total, of which around 33,000 are in long-term care. The proposal would benefit low-income, pensioner owner-occupiers most. Single pensioners comprise around one-third of pensioners, and tend to have lower incomes, and be female.

2. There are currently around 9,300 self-funding residents in care homes in Scotland; 6,000 of them receive funding for both personal and nursing care, and 3,300 for personal care only. The total cost to the public purse is around £95.4 million. The charges for living and housing costs to residents are around £114 million.

3. The majority of self-funding residents will be single-pensioner owner-occupiers. Some 57% of pensioner households are in owner-occupied housing, and 31% were in single-pensioner households. The average net income for a SPH is £206 per week, or £10,712 per annum. Only 8% have net incomes above £15,000.

4. The Family Resources Survey shows that 29% of households with incomes of less than £100 per week are pensioners, 25% of these are single pensioners, and 21% are female. For households with incomes between £110 and £200 per week, 60% are pensioners, of which 49% are single pensioners, and 38% are female.

5. The average net income of SPH is £206 per week, and the average standard charge for residential care is £427.88 for those receiving personal and nursing care, and £363.88 for those receiving only personal care. In such cases, discounting homes from the calculation of capital assets would cost £617.66 per annum and £669.76 per annum respectively.

6. In practice, some residents would remain ineligible for state support on account of income and assets; whilst below average income SPHs would require additional support. For example, a SPH with a net income of £105.45 would cost £5,846.36 per annum, in addition to personal and nursing care funding.

7. These figures are merely illustrative, not estimates or projections, but they suggest that the total cost to the public purse would not be significant, and would benefit low-income pensioner households most, whilst higher income households (or those with significant financial assets) would
continue to be self-funding. Overall, the financial impact of the proposal would be progressive.

8. The current system of financial assessment includes domestic homes as well as financial investments in its calculation of capital assets. Pensioners with assets of £19,500 (2005/06 limit) or more are ineligible for local authority financial support with their living and housing costs. (25% of pensioner households have savings of more than £20,000).

9. It would be easier simply to exclude domestic homes from the calculation of capital assets, and base entitlement on income and financial assets. It is impossible to accurately assess the cost to the public purse of such a change, as we lack the necessary data on income and capital assets of residents who are self-funding.

10. In addition, it would be worthwhile to obtain advice on whether current arrangements could be regarded as discriminatory against single pensioner households, whose homes are treated as assets, whilst for other pensioner households, they are disregarded.

11. At the moment, the system disadvantages single-pensioner owner-occupiers, as their domestic home is treated as a capital asset, whilst other pensioner households have it disregarded; and low-income owner-occupiers, who face selling their homes to meet the costs of residential care, whilst those with higher incomes and significant financial assets can meet their payments by other means.

Professor Arthur Midwinter
July 2005

Arthur Midwinter is a Visiting Professor at the Institute of Public Sector Accounting Research at the University of Edinburgh, and the Budget Adviser to the Scottish Parliament Finance Committee. He was Dean of the Faculty of Arts and Social Sciences at the University of Strathclyde from 1994 to 1999.
INTRODUCTION

1. The Royal Commission on Long Term Care for the Elderly reported in 1999 in favour of both free personal care and free nursing care for all elderly people in need of it. It had argued that the costs of caring for older people should cover living costs and housing costs, as well as personal and nursing care, and that residents should make a contribution to their living and housing costs.

2. After initially rejecting the recommendation on free personal care – whilst providing £25m to cover the costs of nursing care - the Executive subsequently reversed this decision in the Community Care and Health (Scotland) Act 2002. In addition, the Executive set up arrangements for regulating charges and standards for such care home provision.

3. Under the present arrangements, local authorities are both purchasers and providers of care, as local authorities run their own homes, but also purchase places for residents from voluntary and private care homes.

4. Funding support for this care is provided mainly through the Grant Aided Expenditure Assessment system in the Revenue Support Grant. In this case, there are four key assessments, residential accommodation for the elderly (£342m); DWP transfer (Preserved Rights) (£59m); care home fees (£62.6m) and personal and nursing care for elderly people (£81m), giving a total funding package of £544m, which constitutes the Executive’s assessment of what authorities need to spend on such services. These are funded mainly by central grant, although overall around 20% of funding comes from council tax.

CHARGING PROCEDURES

5. Within the local authority, the Social Work Department has the statutory duty to assess peoples’ need for community care services, arranging and providing financial support for those who need places in care homes. In providing and arranging places in care homes, Social Work Departments
carry out a financial assessment of the applicant’s income and capital to assess how much the individual should contribute. The financial assessment is set nationally by the Scottish Executive.

6. In practice, this charging procedure is a means test, which covers both income and capital. Income could include, for example, state retirement pension; occupational and/or personal pension; pension credit; and assumed income from capital. The Social Work Department will usually make its calculations on the basis that any income that is available from benefits such as pension credit is being claimed. Income will be included; disregarded; or partly disregarded in the means test. Capital may include savings, investments and property, including the domestic home.

7. The local authority will assess applicants’ need for personal and nursing care. Support is available at £145 per week (personal) and £65 per week (nursing). Further support may be provided towards living and housing costs dependent on the standard rate (i.e. charge) and the individual’s income and higher levels of care can be purchased by the individual for a “top-up” fee. Individuals can, however, enter into private contracts with care homes without personal and nursing care payments, and may be eligible for attendance allowance.

8. When applicants cannot meet the standard rate after personal and nursing care payments, the financial assessment will show what the individual’s contribution will be. The standard rate may vary between local authority areas. Anyone who has capital in excess of £19,000 will be assessed as being able to pay the standard rate less the contribution made for personal/nursing care. Anyone with capital between £11,500 and £19,000 will make a partial contribution from capital as well as income (£1 income is assumed for each £250 of capital – and this is known as nominal income). Capital below £11,500 is ignored, and any income is means-tested. Jointly held capital is divided equally between the joint owners.

9. When the Executive responded to the Sutherland Report, it acknowledged that

“One of the greatest worries facing older people is that of selling their home to pay for care. We fully recognise their concerns and will take steps to reduce their uncertainty and distress”

(SE 2000, p.4).

The response was to establish a twelve week property disregard for those entering a permanent arrangement. In addition, Deferred Payment Agreements are available, which allow people to avoid selling their homes to meet their care home fees by entering into a legal agreement to have
part of their fees paid by the local authority and the balance settled from their estate (see SEHD Circular No. 13/2004).

10. Finally, capital in the form of the value of the primary home must be ignored by the local authority where it continues to be occupied by a spouse/partner; a relative aged 60 plus; a relative who is incapacitated; a child who is under the resident's responsibility; and a divorced/estranged partner who is a lone parent with a dependent child.

PROPOSALS FOR REFORM

11. Currently, there is a proposal by John Swinburne, MSP, originally to revise the level of capital disregard in the act, upwards from £19,000 to £100,000, but now to disregard home values completely in the assessment. My remit is to examine the financial implications to the public purse of increasing the capital disregard limit in the financial assessment of an elderly person's ability to pay for residential care, or to disregard the value of a person's primary home completely in such assessments. In this exercise, I have used data pertaining to the situation in 2004, although the capital disregard limits have since been increased.

12. The proposal is concerned that the present limits can cause a lot of distress to elderly people at a time when they are vulnerable, if they are required to sell their homes to pay for care. The impact of the proposal will be to enlarge the proportion of elderly people with modest assets being brought into the state support system.

13. Assessing the cost of this proposal is difficult, however, because of the lack of relevant data in the public domain, either of those who do in fact sell their homes to pay for care, or enter into deferred purchase agreements. A Scottish Executive survey in June 2004 received responses from 24 of the 32 Councils, covering 78% of the Scottish elderly population. Arrangements for 137 people were made in 18 authorities. This suggests around 190-200 persons across Scotland might have entered such arrangements. Moreover, the Executive provided £3.5m per annum in 2002-3 for local authorities to draw on to fund these agreements. In practice, only around £1.3m has been utilised (Scottish Executive, S2W-12178, June 2004).

14. To attempt to assess the cost of revising the current Capital Disregard Limit to £100,000 per housing, it is helpful to examine the pattern of housing tenure, household income and the uptake of residential/nursing care by the elderly in Scotland.
TRENDS IN RESIDENTIAL ACCOMMODATION FOR THE ELDERLY

15. The elderly population in Scotland is growing. There were 920,000 persons of pensionable age in 1998, projected to grow to 952,000 by next year, and to 998,000 in 2021. At the present time, around 18% of the population is of pensionable age.

16. In the 2001 Census, there were 514,682 elderly households, of which 293,814, or 57%, were living in owner-occupied housing. Of the households in rented accommodation, over 80% were in receipt of housing benefit in 2003 (DWP 2005). Overall, around 21% of pensioners were classified as living in poverty in 2003.

17. Of pensioner households, around 64% were single person households, and of these, 31% were single pensioner owner-occupier. It is the single pensioner household in private accommodation that is most likely to find it necessary to sell their home or take out a deferred purchase agreement, to pay for the cost of residential care. Not surprisingly, single pensioner households tend to have low incomes, with 69% having less than £10,000 net income per annum, compared with 28% across the population. Only 8% had net income greater than £15,000, compared with 51% across the nation. The average income of single pensioner owner occupiers is £206 per week, or £10,712 per annum.

PENSIONERS IN CARE HOMES

18. Of those 952,000 people of pensionable age, around 34,000, or 3.6%, are in residential or nursing homes. In 2001, the Care Development Group Report showed that the annual cost of such homes was £551m, of which 78% came from public funds, with 22% private funded. In its response to the Sutherland Report, the Executive reported that 80% of residents in care were state funded, whilst some 7-8,000 paid their own fees.

19. Recent statistics on care homes show a steady pattern of residents in care as below:-

<table>
<thead>
<tr>
<th>Month</th>
<th>Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2001</td>
<td>34,356</td>
</tr>
<tr>
<td>March 2002</td>
<td>34,434</td>
</tr>
<tr>
<td>March 2003</td>
<td>34,194</td>
</tr>
<tr>
<td>March 2004</td>
<td>33,979</td>
</tr>
</tbody>
</table>

(Scottish Executive, September 2004)

The majority of these – over 33,000 – are in long term care. Of these, residents as at September 2004, 5,116 (15%) were in local authority care homes; 24,890 (73%) were in private care homes; and 4,053 (12%) in voluntary care homes. From 2005, the data used by the Executive refers
only to care homes (i.e. both residential and nursing homes). Information provided to me by the Scottish Executive reports there are now 9,300 self-funding residents who receive free personal care funding, and 6,000 of them also receive funding for nursing care. This number has increased post-Sutherland, as the introduction of free personal care allows some residents to take longer to run-down their capital assets to the point where they become eligible for means-tested funding.

**OBSERVATIONS**

20. It is possible now to raise two key issues regarding the operation of the current funding arrangements. Firstly, whilst in its initial response to Sutherland, the Scottish Executive committed itself to prioritising “those in greatest need – the frail, the vulnerable, the sick and the poor” – its subsequent application of this principle in terms of access to core social services has been inconsistent, the Executive has certainly introduced a range of initiatives to target such groups – e.g. Education Maintenance Allowances – to assist low income households. In mainstream social provision, however, it has often maintained the universalism approach which underpins the health and education services of free access to all at the point of need. This has been maintained for free personal and nursing care; there are proposals for free eye and dental checks; concessionary fares for the elderly; and nursery school provision for three and four year olds. By this standard, the means-tested approach to meeting the housing and living costs of residents in need of a place in a care home sits out of place. The majority of residents suffer from either dementia (43%) or physical disability (31%), both conditions which are eased by residential care, but only low-income pensioners without capital will receive public funding to support their needs.

21. Secondly, the application of the Capital Disregard Limit in the financial assessment could be interpreted as being discriminatory against single pensioner households, insofar as the primary home is discounted from the calculation of capital and income for elderly people who share their house with a partner or particular kinds of relative, and other exceptions. In the case of single pensioner households, the house is treated as a capital asset, whilst for the other it is treated as a home. There is merit in investigating this issue further, as it could be regarded as contradictory to equal opportunity strategy in the Executive.
DISREGARDING HOMES FROM THE FINANCIAL ASSESSMENT

22. I turn now to the proposal to increase the upper Capital Disregard Limit to £100,000. Unfortunately, despite the fact that domestic properties are the major source of capital assets for most elderly households, and often the crucial element for such financial assessments, local authorities are not required to make returns to the Executive regarding the number of house sales made to fund care. Without an accurate number of sales, precise assessment of the cost to the public purse of such a change is not possible.

23. Moreover, there are two problems with the proposal as it currently stands. Firstly, it appears not to make any proposal to change the lower limit of £11,500, at which point applicants are required to pay £1 per £250 of capital between £11,500 and £19,500 in the assessment of their weekly income. This provision further complicates the costing exercise, as we lack data numbers of such households also.

24. Secondly, whilst the intention is to remove the requirement to sell their homes to meet the costs of care, the problem is that the limit covers investment and savings as well as property assets. Therefore, residents with such assets from £19,500-£100,000 would also find that element discounted in their financial assessment. It would be beneficial to reconsider this aspect also, perhaps by simply excluding the family home from all assessments of capital, similar to the option considered by Sutherland, and described as a “solely income-based means test”, like the system in the United States. At that time, Sutherland estimated that removing all capital assets from the calculation would cost around £1billion per annum – which would suggest a cost of less than £100m in Scotland with 8.6% of the population, and a lower level of home ownership. This was prior to the introduction of free personal care, and as the current proposal relates only to domestic homes, then the cost would, in principle, be significantly lower.

25. From the data that is in the public domain, it is clear that whilst there is a trend of incremental growth in the elderly population, perhaps because of the development of care in the community, the numbers in care homes remain small, and relatively stable at around 34,000 (i.e. less than 4% of the elderly population). Unfortunately, we do not have data to show the proportion of pensioners in care from single pensioner households, but it seems plausible to assume that single pensioners are more likely to enter care than those living with partners or other adults. Single pensioners compose around one-third of all pensioners. They tend also to have lower incomes, and because of greater longevity, to be female. Some 10% of Scottish households have incomes of less than £200 per week, and some
16% of households are single pensioners. The Family Resources Survey, however, shows that 29% of households with incomes of less than £100 per week are pensioner households, but 25% of these are single pensioner households, and 22% are female. For income levels between £100 and £200 per week, the comparable figures are 60% of such households are pensioner households, and of these 49% are single pensioner households, of which 38% are female.

26. The impact of Mr. Swinburne’s proposal would be most beneficial to low-income property owners, with modest financial assets. Again, the data available is limited, but the Family Resources Survey provides some insight. This shows that single pensioner households are more dependent on state support for their income, 68% of men and 78% of women receive half or more of their income from state support, compared with 30% nationwide.

27. Moreover, as noted earlier, the Scottish Executive advised that the average income for a single pensioner owner occupier, using DWP data from both private and state incomes, is £206 per week. By contrast, the average earnings for those in work is £419 per week.

28. In the case of savings and assets, however, the survey shows that 25% of pensioner households have savings of £20,000 or more, compared with 15% of all households. It also shows that 12% of benefit recipients have savings of more than £20,000, compared with 33% of pensioner couples, 21% of single male pensioners and 14% of single female pensioners. This suggests that a significant proportion of the 9,300 self-funding pensioners will remain self-funding on grounds of both income and assets if the property value is discounted in the financial assessment. Whilst the average income of single pensioner households is £206 per week, 69% of such households have incomes less than this figure, compared with 30% of other pensioner households, and 28% of the population as a whole.

29. To sum up, it is single pensioners who are most likely to enter care homes, and they tend to have lower incomes than other pensioner households. This position is even more marked for women. Nevertheless, a significant proportion of such pensioners will be both home owners, and have financial assets greater than £20,000.

30. Whilst it is not possible to provide a comprehensive assessment of the cost to the public purse of removing property values from the capital assets used in financial assessments, it is possible to look at the implications for the average single pensioner with average income of £206 per week, on the basis of average costs per care place in Scotland.
31. Under the current arrangements, residents with capital greater than £19,500 are ineligible for public support for their living costs, but can receive support for personal and nursing care. With the average house value in Scotland now over £115,000, this will apply to most property owners. For those pensioners with above average incomes, or financial assets, or receiving family financial support, the need to sell the property will not arise.

32. For those with little in the way of financial assets, and average income for single pensioners, the sale of the property may be necessary to ensure the resident has adequate resources to fund their living costs.

33. The Executive estimates that 9,300 residents are self-funding, of which 6,000 receive funding for both personal and nursing care, and 3,300 receive only personal care funding. The Executive also estimates that the current average charge (exc. Edinburgh) in Scotland is £427.88 per week for the former group, and £363.88 for the latter.

34. In the case of those receiving full personal and nursing care on average income, then the calculation of the individual's contribution would be as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Charge</td>
<td>£427.88</td>
</tr>
<tr>
<td>Minus Income from FWC</td>
<td>£210.00</td>
</tr>
<tr>
<td>Net Cost</td>
<td>£217.88</td>
</tr>
<tr>
<td>Personal Expenses</td>
<td>£18.10</td>
</tr>
<tr>
<td>Allowances</td>
<td></td>
</tr>
<tr>
<td>Resident Contribution</td>
<td>£199.78</td>
</tr>
<tr>
<td>Balance</td>
<td>£11.88</td>
</tr>
</tbody>
</table>

Additional cost to the public purse of £11.88 per week or £617.76 per annum.

35. Clearly, the additional cost would be greater to the public purse for those on lower incomes, and less for those on higher incomes. In practice, around 69% of single pensioner owner-occupiers have incomes below the average, and would require greater levels of support.

36. In the case of residents only receiving free personal care, the calculations would be:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Charge</td>
<td>£363.88</td>
</tr>
<tr>
<td>Minus FPC</td>
<td>£145.00</td>
</tr>
<tr>
<td>Net Cost</td>
<td>£218.88</td>
</tr>
<tr>
<td>-PEA</td>
<td>£18.10</td>
</tr>
<tr>
<td>Balance</td>
<td>£200.78</td>
</tr>
<tr>
<td>Resident Contribution</td>
<td>£187.90</td>
</tr>
</tbody>
</table>
Additional cost to the public purse of £12.88 or £609.76 per annum.

37. From these sums, operating on the simplified assumption that all self-funding residents were single pensioners with average incomes paying average charges, the broad additional cost would be:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6000 x</td>
<td>617.76</td>
</tr>
<tr>
<td>3300 x</td>
<td>669.76</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

38. This figure is purely indicative, and not a prediction. More precise assessment would require details as to the average incomes of the 9,300 self-funding residents, their financial assets, and whether their property value is already exempt under the current Capital Disregard Limit. In practice, those with financial assets above £20,000 would still be ineligible for funding for their living costs because of higher income levels. Whilst these appear small sums of money to the single pensioner with average income, the cost will be greater for those with lower incomes and as already noted, a majority of single pensioners have below average incomes. Age Concern’s helpful illustration of June 2004 on charging procedures used an example of a total weekly income of £105.45 – from basic pension and pension credit – then the resident’s contribution would be £87.35, leaving a balance to the local authority of £112.43 per week, or £5,846.36 per annum. At the other end of the income spectrum, the resident with income above £305 per week would not be eligible for local authority support. The proposals would therefore be progressive in impact, and benefit low income property owners with limited financial assets most. At the moment, on the basis of the figures supplied to me by the Executive, the total paid by self-funding residents for their care will be around £114m. The proposal would reduce this figure.

39. The current saving to the public purse from the current Capital Disregard Limit may well be very small. I must stress again that these are merely illustrative figures, not estimates nor predictions. However, it was recognised by Sutherland that the current inclusion of the value of the home in the financial assessment leaves “emotive and practical problems”, yet we have no evidence that any significant savings to the public purse arises from it, and indeed, it is plausible on the data in the public domain that such savings may well be minimal in practice. More accurate estimates could be obtained through a piece of operational research, with the support of local authorities, care homes and the Scottish Executive. It would be simpler and more practical simply to exclude the primary home from the calculation of a resident’s eligibility for State support, and this would bring the greatest benefit to low-income pensioners with modest
savings who own their homes, whilst those with significant financial income and assets would continue to be self-funding. In short, the proposal would be fiscally progressive in impact.
Table 1: Pensioner Households by Tenure May 2003

<table>
<thead>
<tr>
<th>Tenure</th>
<th>Number</th>
<th>%PH*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner-occupied</td>
<td>293,814</td>
<td>57.1</td>
</tr>
<tr>
<td>Rents from LA</td>
<td>157,374</td>
<td>30.6</td>
</tr>
<tr>
<td>Other Social Landlords</td>
<td>37,424</td>
<td>7.3</td>
</tr>
<tr>
<td>Private Renters</td>
<td>16,295</td>
<td>3.0</td>
</tr>
<tr>
<td>Other**</td>
<td>9,785</td>
<td>1.9</td>
</tr>
<tr>
<td>Total</td>
<td>514,682</td>
<td></td>
</tr>
</tbody>
</table>

* PH = Pensioner Households  
** Other = Includes employer of a household member, relative or friend of a household member and other.

Source: DWP and the Scottish Executive

Table 2: Income and Savings of Single Pensioner Households in Scotland

<table>
<thead>
<tr>
<th>Mean Income</th>
<th>% with assets &gt;£19,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Owned Outright</td>
<td>£190</td>
</tr>
<tr>
<td>Owned Outright</td>
<td>£223</td>
</tr>
<tr>
<td>All</td>
<td>£206</td>
</tr>
</tbody>
</table>

Source: The Scottish Executive

Table 3: Net Annual Pensioner Household Income 2003

<table>
<thead>
<tr>
<th>SPH</th>
<th>HH</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>0-£6000</td>
<td>24</td>
</tr>
<tr>
<td>£6001-£10000</td>
<td>47</td>
</tr>
<tr>
<td>£10001-£15000</td>
<td>22</td>
</tr>
<tr>
<td>£15001-£20000</td>
<td>5</td>
</tr>
<tr>
<td>£20,000 plus</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Scottish Household Survey Annual Report, 2003

* SPH = Single Pensioner Households  
** HH = All Households
### Table 4: Pensioner Households by Composition and Total Weekly Household Income (%Households)*

<table>
<thead>
<tr>
<th></th>
<th>SMP</th>
<th>SFP</th>
<th>PH</th>
<th>One Adult over Pension Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;£100 per week</td>
<td>3</td>
<td>22</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>£100-£199</td>
<td>11</td>
<td>38</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>£200-£299</td>
<td>6</td>
<td>16</td>
<td>22</td>
<td>6</td>
</tr>
<tr>
<td>£300-£399</td>
<td>3</td>
<td>6</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>£400-£499</td>
<td>2</td>
<td>2</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>£500-£599</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>£600-£699</td>
<td>-</td>
<td>1</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>£700-£799</td>
<td>1</td>
<td>-</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>£800-£899</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>£900-£999</td>
<td>1</td>
<td>-</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>£1000+</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: DWP Family Resources Survey 2003-4

### Table 5: Savings of Pensioner Households

<table>
<thead>
<tr>
<th>Savings</th>
<th>%PH</th>
<th>%HH</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Savings</td>
<td>21</td>
<td>27</td>
</tr>
<tr>
<td>Less than £1500</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>£1500 but less than £3000</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>£3000 but less than £8000</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>£8000 but less than £10000</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>£10000 but less than £16000</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>£16000 but less than £20000</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>£20,000 plus</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Family Resources Survey 2003-4

SMP: Single Male Pensioners  
SFP: Single Female Pensioners  
PH: Pensioner Households  
HH: Households
APPENDIX 2

Legislative Background

Section 21 of The National Assistance Act 1948 (the 1948 Act) places a duty on local authorities to provide residential accommodation for persons aged 18 or over who for reasons of age, illness or disability are in need of care and attention which is not otherwise available to them. Section 22 of the 1948 Act gives powers to local authorities to charge for the provision of this accommodation and to recover certain costs from the person for which they are liable. Power is given to the Secretary of State (now transferred to Scottish Ministers by section 53 of the Scotland Act 1998 c.46) in section 22(5) to make regulations for assessing a person’s liability to pay.

Under the Social Work (Scotland) Act 1968 c.49 (the 1968 Act) ‘accommodation’ comprises of board, lodgings and social care. The 1968 Act at Section 12 etc sets out the general duties of local authorities and at 12(3A) makes provision for assessing counting income. Section 87(3) of the 1968 Act provides that any accommodation provided under that Act or under section 7 of the Mental Health (Scotland) Act 1984 will, for charging purposes, be regarded as being provided under the 1948 Act.

In 2002, the Scottish Executive legislated to provide the social care (personal and nursing care) aspect of accommodation free of charge.

The Community Care and Health (Scotland) Act 2002 (asp 5) (the 2002 Act), stipulates that local authorities will provide social care free of charge as long as the social care required is that covered by section 1 of the 2002 Act, as outlined below.

Section 1(a) covers personal care as defined by section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8) (the 2001 Act). In the 2001 Act, personal care is defined as meaning “care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, remembering to eat and wash).”

Section 1(b) is personal support, also defined in the 2001 Act as “means counselling, or other help, provided as part of a planned programme of care”.

Section 1(c) the types of care mentioned in schedule 1 to the 2002 Act such as in respect of personal hygiene, eating requirements, assistance with medication and general well being which includes assistance with dressing and going to bed.
Section 1(d) nursing care whether or not from a registered nurse.

Section 1(4) gives the power to make regulations in respect of charging.

Section 2 of the 2002 Act gives powers to the Scottish Ministers to determine, by regulation, what is and what is not to be regarded as chargeable accommodation. This is done by The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002 No.303, which provides that those in receipt of social care that meets the specifications given in Section 1 of the 2002 Act, receive that care free of charge. In summary, a free personal care contribution of £145 is payable to people aged 65 and over, this rises to £210 where nursing care is also required. A free nursing care contribution of £65 is available to care home residents of all ages.

For further clarity, section 22 (2) of the 2002 Act stipulates that social care does not include the provision of accommodation. With regard to charging, social care is now distinct from the charges for board and lodgings.

People in residential care are still liable to pay for their board and lodging costs under section 22 of the 1948 Act. Regulations stemming from this Act, The National Assistance (Assessment of Resources) Regulations 1992 are used to calculate how much a person is liable to pay. These regulations have been amended for Scotland. The National Assistance (Assessment of Resources) Amendment (No’s.2 and 3)(Scotland) Regulations 2001 No’s 105 and 138 and The National Assistance (Assessment of Resources) Amendment (No.4) (Scotland) Regulations 2003 No. 577 provided the last relevant update.

Section 3 of the 2002 Act substitutes new sections 12(3A) and 3(B) into the 1968 Act, giving powers to Scottish Ministers to prescribe how much of a person’s resources should be disregarded when determining whether to make available assistance by providing residential accommodation. The Order made by the Scottish Ministers, The Community Care (Disregard of Resources) (Scotland) Order 2002, No. 264, prescribes that for the care described in 1(d) or for the care described in 1(a)-(c) of the 2002 Act, where the person is over 65 the resources of the person must be disregarded entirely.

In summary¹, what is then left for the person to pay are the costs that come from the board and lodging element. There are several factors that must be considered when assessing ability to pay, such as earnings, benefits and other capital such as savings and property.

Property (house or land)

This information below relates only to one property, the one in which they primarily dwell.

If a person is temporarily in a residential care home and they intend to return to their home or they are taking steps to sell their property to enable them to buy a more suitable property for them to return to then the value of their home should be disregarded when assessing the amount they are liable to pay. (National Assistance (Assessment of Resources) Regulations 1992, schedule 4, para 1)

If a person becomes a permanent resident in a care home, then the value of their home should be disregarded for the first 12 weeks. This allows residents some time to decide whether or not they wish to continue living in the care home before selling their house. (National Assistance (Assessment of Resources) Regulations 1992, schedule 4, para 1A)

The financial assessment must ignore the value of the persons home if any of the following people are still living in the home. (National Assistance (Assessment of Resources) Regulations 1992, schedule 4, para 2)

- Husband, wife or unmarried partner;
- A relative over 60;
- A relative under 16 if the person in care supports them;
- A relative who is incapacitated or disabled; or
- A divorced or estranged partner who is a lone parent with a dependant child.

The value of the person’s home can also be disregarded if the person who used to care for them still lives there. (National Assistance (Assessment of Resources) Regulations 1992, schedule 4, para 18)

It is also possible under the 2002 Act to ‘defer payments’, which effectively means an agreement is put in place that allows the person to defer the sale of their home and the local authority will recover the money from the persons’ estate upon their death. (The Community Care (Deferred Payment of Accommodation Costs)(Scotland) Regulations 2002, Regulation 4(2))

Assessment of capital

Once the capital has been assessed the following applies. (from the National Assistance (Assessment of Resources) Regulations 1992, Regulation 28)

- Capital up to £11,500 will be ignored
- For capital between £11,500 and £18,500 the local authority will expect to receive £1 a week for every £250 (or part £250) over £11,500
• For capital over £18,500 the local authority will expect to receive the costs in full for board and lodging.

If property is given away as a gift immediately prior to the person entering a residential care home, the local authority may decide that the person has deliberately disposed of capital to avoid paying for care and the person may be assessed as though they still actually had the capital. (National Assistance (Assessment of Resources) Regulations 1992, Regulation 25)

**Parliamentary Position**

Under the current legislation, Scottish Ministers would be able to make regulations that fulfilled the aim of the proposal. For example if Scottish Ministers drafted regulations under section 12 (3A) of the 1968 Act as amended / substituted by section 3 of the 2002 Act. This section covers the disregarding of a persons resources or disregarding a way resources are calculated when determining whether or not to provide assistance by way of residential accommodation.

**Competence Questions**

This proposal would appear to be within the competence of the Parliament. While Schedule 5, Head F – Social Security of the Scotland Act 1998 clearly shows social security schemes as a reserved matter, the subject matter of Part II of the Social Work (Scotland) Act 1968 (social welfare services) is an exception to the reservation.

**ECHR Questions**

It is not thought that the proposal would have any ECHR implications.

**EC Questions**

It is not thought that the proposal would have any EC implications although this will require further checking