

# Health, Social Care and Sport Committee

## 12th Meeting, 2022 (Session 6), Tuesday 22 March 2022

### Subordinate legislation

### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instruments:
  - [The National Assistance \(Sums for Personal Requirements\) \(Scotland\) Regulations 2022](#)
  - [The National Assistance \(Assessment of Resources\) Amendment \(Scotland\) Regulations 2022](#)
  - [The National Assistance \(Assessment of Resources\) Amendment \(Scotland\) \(No. 2\) Regulations 2022](#)

#### Procedure for negative instruments

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
3. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
4. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
5. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the

same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

6. Each negative instrument appears on the Health, Social Care and Sport Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:  
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

## Recommendation

9. The Committee is invited to consider any issues which it wishes to raise in relation to these instruments.

### **Clerks to the Committee**

**17 March 2022**

**SSI 2022/70**

**Title of Instrument:** The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 24 February 2022

**Meeting Date:** 22 March 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [8 March 2022](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 18 April 2022

**Purpose**

11. The purpose of this instrument is to increase the value of personal expenses allowance in line with average earnings, an increase of 5.8%.

12. This instrument will come into force on 11 April 2022 in line with changes to the Department for Work and Pensions benefit and pension rates.

13. The personal expenses allowance is usually increased each April at the same time as Social Security benefits are updated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes. These regulations will increase the weekly rate of this allowance in line with the increase in average earnings from £29.30 to £31.00 from 11 April 2022.

14. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

**SSI 2022/71**

**Title of Instrument:** The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 24 February 2022

**Meeting Date:** 22 March 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No.

15. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [8 March 2022](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 18 April 2022

**Purpose**

16. The purpose of this instrument is to:

- a. increase the value of savings credit disregard in line with average earnings which is currently forecast at 5.8%.
- b. To increase the lower capital limit from £18,000 to £18,500 and the upper capital limit from £28,750 to £29,750 in line with CPI forecast at 3.1%.

**Savings Credit Disregard**

17. These regulations increase the maximum weekly savings credit disregard from £6.90 to £7.30 for single resident and from £10.25 to £10.85 for couples. These increases are in line with the increase in average earnings (5.8%).

**Capital limits**

18. Annual increases to capital limits are increased in line with the Consumer Price Index (CPI), currently estimated to be 3.1%, and rounded to the closest £250. In line with this, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2022 increase the upper capital limit from £28,750 to £29,750 and increases the lower capital limit from £18,000 to £18,500.

19. A copy of the Scottish Government's Policy Note is included in **Annexe B**.

**SSI 2022/72**

**Title of Instrument:** The National Assistance (Assessment of Resources) Amendment (Scotland) (No. 2) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 24 February 2022

**Meeting Date:** 22 March 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No.

20. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [8 March 2022](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 18 April 2022

**Purpose**

21. The purpose of the instrument is to disregard payments paid to individuals living in residential care from the Scottish Infected Blood Support Scheme and equivalent schemes enacted in other parts of the United Kingdom;

- a. payments made under the Victims' Payments Regulations 2020;
- b. payments made under the Redress Board (Northern Ireland);
- c. payments made under the payment scheme for former British child migrants within the National Assistance (Assessment of Resources) Regulations 1992.

22. This will ensure these payments are not taken into consideration by local authorities when carrying out financial assessment for charges for those living in residential care.

23. A copy of the Scottish Government's Policy Note is included in **Annexe C**. Equality Impact Assessments have been carried out for each of the disregarded payments. These can be accessed using the links below:

- a. [Equality Impact Assessment part 1](#)
- b. [Equality Impact Assessment part 2](#)
- c. [Equality Impact Assessment part 3](#)
- d. [Equality Impact Assessment part 4](#)

**POLICY NOTE****THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS)  
(SCOTLAND) REGULATIONS 2022****SSI 2022/70**

The above instrument was made in exercise of the powers conferred by section 22(4) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 11 April 2022 in line with changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

**To increase the value of personal expenses allowance in line with average earnings, an increase of 5.8%.**

**Policy Objectives**

The background is that under section 22 of the National Assistance Act 1948 (“the 1948 Act”), as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968 (“the 1968 Act”), local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation (excluding any entitlement to free nursing and personal care under the Community Care and Health (Scotland) Act 2002 and associated regulations).

Section 22(5) of the 1948 Act provides that, in assessing a resident’s ability to pay, the local authority shall apply regulations made by the Secretary of State. By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending these regulations as regards Scotland are devolved to Scottish Ministers. Section 22(4) of the 1948 Act, as applied by section 87(3) and (4) of the 1968 Act, requires a local authority to assume, in assessing a person’s liability to pay for accommodation provided under the 1968 Act or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, that persons will require to retain a sum of money per week to cover the cost of their personal requirements, for example, clothes and toiletries.

The National Assistance (Assessment of Resources) Regulations 1992, made under section 22(4) of the 1948 Act, prescribe the above mentioned weekly personal expenses allowance. This allowance is usually increased each April at the same time as Social Security benefits are updated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes. These regulations will increase the weekly rate of this allowance in line with the increase in average earnings from £29.30 to £31.00 from 11 April 2022.

**Consultation**

Annual rises in these rates are routine. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

**Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2021/22.

**Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process. Local Government will receive additional funds from the Scottish Government to cover the increased costs.

Scottish Government  
Social Care and National Care Service Development Directorate  
February 2022

**POLICY NOTE****THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2022****SSI 2022/71**

The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 11 April 2022 in line with changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

**To increase the value of savings credit disregard in line with average earnings which is currently forecast at 5.8%.**

**To increase the lower capital limit from £18,000 to £18,500 and the upper capital limit from £28,750 to £29,750 in line with CPI forecast at 3.1%.**

**Policy Objectives***Capital Limits*

The background is that under section 22 of the National Assistance Act 1948 (“the 1948 Act”) as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968, local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation (excluding any entitlement to free nursing and personal care under the Community Care and Health (Scotland) Act 2002 and associated regulations).

Section 22(5) of the 1948 Act provides that, in assessing a resident’s ability to pay, the local authority shall apply regulations made by the Secretary of State. The applicable regulations are the National Assistance (Assessment of Resources) Regulations 1992 (“the 1992 Regulations”). By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending the 1992 Regulations as regards Scotland are devolved to the Scottish Ministers.

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2020 amended the capital limits so that anyone with capital above the upper capital limit, including property, must meet his or her remaining accommodation costs (over and above any entitlement to free personal care and nursing care) in full. Where the capital falls between upper and lower capital limits the local authority must assist the resident in meeting the cost of the accommodation. Capital under the lower capital limit is not taken into account in assessing a contribution.

Annual increases to capital limits are increased in line with the Consumer Price Index (CPI), currently estimated to be 3.1%, and rounded to the closest £250. In line with

this, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2022 increase the upper capital limit from £28,750 to £29,750 and increases the lower capital limit from £18,000 to £18,500.

### *Savings Credit Disregard*

The 1992 Regulations set out a number of different types of income that are to be disregarded when a local authority assesses a resident's income for the purpose of charging. Since the introduction of the State Pension Credit Act 2002 this has included a sum where a resident is in receipt of savings credit. These regulations increase the maximum weekly savings credit disregard from £6.90 to £7.30 for single resident and from £10.25 to £10.85 for couples. These increases are in line with the increase in average earnings (5.8%).

### **Consultation**

Annual rises in these rates are routine. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

### **Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2021/22.

### **Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process. Local Government will receive additional funds from the Scottish Government to cover the increased costs.

Scottish Government  
Social Care and National Care Service Development Directorate  
February 2022

**POLICY NOTE****THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) (NO. 2) REGULATIONS 2022****SSI 2022/72**

The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 11 April 2022.

**Purpose of the instrument.**

**To disregard payments paid to individuals living in residential care from the Scottish Infected Blood Support Scheme and equivalent schemes enacted in other parts of the United Kingdom; payments made under the Victims' Payments Regulations 2020; payments made under the Redress Board (Northern Ireland); and under the payment scheme for former British child migrants within the National Assistance (Assessment of Resources) Regulations 1992. This will ensure these payments are not taken into consideration by local authorities when carrying out financial assessment for charges for those living in residential care.**

**Policy Objectives**

It is appropriate to disregard certain discretionary payments from financial assessments for residential care charges. This is to ensure people retain the full value of these payments in line with the principles of these funds and their intended outcomes.

*Scottish Infected Blood Support Scheme (SIBSS)*

SIBSS is a scheme which provides financial support to those who were infected mostly in the 1970s or 1980s with hepatitis c (HCV) and/or HIV via infected NHS blood transfusions, blood products or tissue transplants and their widows, widowers, civil partners or other long-term cohabiting partners. It has replaced five former support schemes, which operated on a UK-wide basis and were all disregarded (the Skipton Fund, the Caxton Foundation, the Macfarlane Trust, the Eileen Trust and MFET Ltd).

*Victims Payment Regulations*

Payments made under the Victims' Payments Regulations 2020 to those injured during the Troubles conflict. This scheme acknowledges the harm caused to those injured between January 1966–April 2010 through no fault of their own during the Troubles to promote reconciliation in Northern Ireland following this period of conflict.

More than 40,000 people are estimated to have been injured during the Troubles and many individuals continue to live with permanent disablement caused by serious

physical and psychological injuries sustained in Troubles-related incidents, which has a serious impact on their day-to-day lives.

A Troubles-related incident is defined in statute as “an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.”

#### *Redress Board (Northern Ireland)*

Compensation payments made under the Redress Board (Northern Ireland) as set up under the Historical Abuse (Northern Ireland) Act 2019 for survivors of historical child abuse. This Board was set up to make awards following an inquiry into historic abuse of children under age 18, who live in any of the 22 residential institutions run by religious, charitable and state organisations across Northern Ireland over a 73 year period between 1922 and 1995.

#### *Payment scheme for former British child migrants*

The UK government has set up a payment scheme for former British child migrants, who were separated from their families and sent overseas as part of the UK government’s historic participation in child migration programmes.

The scheme was set up by the government after a recommendation made in the Independent Inquiry into Child Sexual Abuse (IICSA) interim report and its report on child migration programmes, which were both published in spring 2018.

### **Consultation**

We have consulted with members of the Charging for Residential Accommodation Guidance (“CRAG”) working group, whose membership consists of local authorities, COSLA officials and other stakeholders.

### **Impact Assessments**

Equality Impact Assessments have been carried out for each of the new payments disregarded.

### **Financial Effects**

Scottish Government’s initial understanding is that given this context, additional costs imposed on local authorities by disregarding these payments from social care means tests are expected to be minimal.

Scottish Government  
Social Care and National Care Service Development Directorate  
February 2022