



CHARGING
for
RESIDENTIAL ACCOMMODATION
GUIDE
(CRAG)

in support of
The National Assistance (Assessment of Resources) Regulations
1992

UPDATE

CRAG has been updated to take account of changes announced in LAC(2003)22. These and several other minor presentational changes are shown by the use of shading.

6 October 2003

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SECTION 1 – INTRODUCTION

About this guidance

Status of the guidance

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

Acts of Parliament and Regulations

- 1.002 Where a paragraph in this guidance is directly linked to a section of the Act or a regulation, the relevant section or regulation is shown immediately following the text of the paragraph. *Section* refers to a section of the National Assistance Act 1948. *Reg.* Refers to a regulation of the National Assistance (Assessment of Resources) Regulations 1992. *Schedule* refers to a schedule to the National Assistance (Assessment of Resources) Regulations 1992.

Gender

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

General

Statutory basis

- 1.004 Where a person is provided with accommodation under Part 3 of the National Assistance Act 1948, section 22 of that Act provides for him to be charged for the accommodation.
Section 22(1)
- 1.005 Section 22 requires the local authority to fix a standard rate for the accommodation. If a resident (i.e. a person who is provided, or proposed to be provided, with accommodation under Part 3) is unable to pay the standard rate, the local authority must assess their ability to pay, and decide what lower amount should be charged.
Section 22(3)
- 1.005A There should be no charge made for aftercare services, which can include residential care, provided under Section 117 of the Mental Health Act 1983.

Standard rate

- 1.006 Section 22 requires local authorities to set the standard rate for local authority homes at an amount equivalent to the full cost to the authority of providing the accommodation.
Section 22(2)
- 1.007 The standard rate for accommodation in homes not managed by the local authority will be the gross cost to the local authority of providing or purchasing the accommodation under a contract with the independent sector home.
Section 26(2)

Arrangements for accommodation

- 1.007A Where a local authority is considering whether to make arrangements for residential accommodation, and is determining whether care and attention are otherwise available to a person section 21(2A) requires the authority to disregard the person’s capital up to the capital limit (see paragraph 6.003). Where a local authority need to calculate a person’s capital for the purposes of section 21(2A), the capital shall be calculated in the same way as if he were a person for whom accommodation is proposed to be provided.
Section 21(2A) and (2B)

Assessing ability to pay

Regulations

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

Local authority managed homes

- 1.009 In local authority managed homes, the authority must charge the full cost of providing the accommodation – the “standard rate”. Where the local authority is satisfied that a resident is unable to pay the standard rate, it must assess his ability to pay and, on the basis of that assessment, decide the lower amount which should be paid. *Section 22(3)*

Independent homes

- 1.010 A contract made with an independent home must include arrangements for the local authority to pay the home for the accommodation, as well as specifying the amount to be paid. The local authority must then ask the resident to refund that amount to the authority. Where the resident satisfies the local authority that he is unable to make a full refund, the local authority must assess their ability to pay in the same way as a person in a local authority managed home, and decide the lower amount to be refunded. (See 1.023 and 1.024 for collection of charges). *Sections 26(2) and 26(3)*

Nursing mothers

- 1.011 Section 21(1)(aa) of the National Assistance Act 1948 allows for the provision of residential accommodation for nursing mothers. Because of this, a LA should charge for the accommodation under the rules contained in this guidance. In these circumstances it may be necessary for local authorities to vary the amount of personal expenses allowance to reflect the needs of the infant (see 5.005).

Residents with a dependent child

- 1.012 Where a person placed in residential accommodation has a dependent child, the LA will need to consider using the powers in Section 22(4) of the National Assistance Act 1948 to vary the amount of personal expenses allowance needed by the resident to reflect the needs of the dependent child (see 5.005).

Reduction for assistance in running a local authority managed home

- 1.013 Section 23 of the Act allows local authorities to make rules governing the running of residential accommodation managed by them. These rules may provide for part of the charge for accommodation to be waived where a resident helps in running the home. The payment the resident is liable to make must be determined in accordance with section 22, and the local authority may then waive part of that charge in accordance with the rules made. *Section 23(3)*
- 1.014 The provisions in paragraph 1.013 do not apply to people in homes which are not managed by the local authority.

Information to be given to the resident

- 1.015 The LA must ensure that the resident is given a clear explanation, usually in writing, of how the assessment of his ability to pay has been carried out. This should explain the usual weekly assessed charge. They should also inform the resident of the reasons why the charge may fluctuate, particularly where a new resident's charge may vary in the first few weeks of admission because, for instance, of the effect of benefit paydays on Income Support/Pension Credit or the withdrawal of Attendance Allowance or Disability Living Allowance (Care

component). The resident should, however, be informed of why the charge may fluctuate. There is also no requirement to specify the assessed charge in the contract with the home.

Residents unable to handle their own affairs

- 1.016 There will be occasions where a resident is unable to provide the LA with the information needed to assess the charge because they are generally unable to handle their own affairs. In these cases the LA should find out if anyone has a Power of Attorney, Receivership under the Court of Protection or any other dealings with the resident's affairs (e.g. someone who has been given appointeeship by the Department for Work and Pensions (DWP) for the purpose of Benefit payments).

Treatment of fractions in assessment

- 1.017 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

Local authority managed homes

- 1.018 With effect from 6 October 2003 the Part 3 rate of income Support/Minimum Income Guarantee was abolished and people in residential accommodation, which is managed or provided by a local authority, are entitled to normal rates of Income Support/Pension Credit.
- 1.019 People in residential accommodation which is managed or provided by a local authority but which does not include board are entitled to Income Support/Pension Credit as if they were living in their own home and may claim Housing Benefit.

Independent homes

- 1.020 With effect from 6 October 2003 the residential allowance element of Income Support/Minimum Income Guarantee was abolished and people in registered independent residential care homes, including those providing nursing care are entitled to normal rates of Income Support/Pension Credit. They are not entitled to Housing Benefit.
- 1.021 People in unregistered independent residential accommodation are entitled to Income Support/Pension Credit at the same rate as if they were living in their own homes and may claim Housing Benefit plus Supporting People payment where appropriate.

Attendance Allowance / Disability Living Allowance (Care component)

- 1.021A See Annex E for details of entitlement to Attendance Allowance and Disability Living Allowance (DLA) (Care component).

Admission to Hospital

- 1.022 When a resident is admitted to hospital, his Social Security benefits will be reduced after a period. See Annex F for details.

Collecting charges from residents in independent homes

Resident to pay the charges direct to the home

- 1.023 Normally, residents will pay their assessed charge direct to the local authority. However, Section 26(3A) of the National Assistance Act 1948 provides for an exception to this rule for residents placed by local authorities in independent sector homes: where the resident, the local authority, and the organisation or person managing the premises **all** agree, the resident may pay direct to the home the amount that he or she would otherwise pay to the local authority. This will leave the local authority responsible for paying the home the remainder of the cost.

Liability for payment to the home

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

Section 26(3A)(a)

Charges for Day Care Services

- 1.024A Residents should not be charged extra for day time activities which have been negotiated as part of the residential care package, as the cost of these services would already be included in the standard charge agreed by the LA for that package. Where a separate package of services has been arranged by the LA for a resident then the LA can consider whether to charge the resident extra for these services (using the discretionary charging powers for non-residential services). As the resident may only have their PEA and any disregarded income available, the amount charged (if any) is likely to be minimal.

Preserved rights

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

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

- 1.026 It is important that LAs maintain good liaison arrangements with Jobcentres/the Pension Services as in some aspects of the assessment the LA, if they have not been able to obtain necessary information from the resident or another source with due account of the common law duty of confidentiality, may need to contact Jobcentres/the Pension Service. (See LASSL(93)8). In this respect a consent form has been developed by DWP for individuals to complete so that information of the detailed breakdown of the rate of benefit they can receive can, with their consent, be shared with councils as appropriate. The full title of the form is Customer's Consent to the DWP Disclosing their Benefit Entitlement Information to the LA for Community care Assessment Purposes. The form is available on the Department of Health website at www.doh.gov.uk/scg/crag. Please note : councils should not approach DWP or the offices of Jobcentre Plus or the Pension Services if they can obtain accurate breakdowns of entitlement from residents.

Complaints

- 1.027 Complaints about the level of charge levied by a LA are subject to the usual social services complaints procedures described in Chapter 6 of "Community Care in the Next Decade and Beyond" and in the Social Services Inspectorate's practice guidance "The right to complain" issued in August 1991.

Permanent and Temporary Stays

- 1.028 Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such council's or users' resources should play no part in the decision. Knowing whether they are permanent or temporary will matter a great deal to residents and carer's. Hence decisions

about the status of admission should be made, agreed and shared, openly with them - or others on their behalf if appropriate - and put in writing.

SECTION 2 - LESS DEPENDENT RESIDENTS

Background

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

National Health Service Act 1977 (NHS Act 1977)

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

Effect of repeal of powers under the NHS Act 1977

- 2.006 Subject to the exemption outlined in 1.005A, **all** adult residential accommodation placements made by LAs, including those for people who are less dependent, will be made under the National Assistance Act 1948. Under this Act, a charge **must** be made for the accommodation. If a resident can not pay the full charge, the local authority is required to assess his ability to pay in accordance with *The National Assistance (Assessment of Resources) Regulations 1992*.
- 2.007 It is recognised that the normal charging rules would not be appropriate for "less dependent" residents because they will usually need to be left with more than the standard personal expenses allowance if they are to live as independently as possible. There is special provision in the regulations, therefore, to enable local authorities to continue to treat "less dependent" residents differently where they consider it reasonable in the circumstances to do so. *Reg 5*

Identifying "less dependent" residents

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

Reg 2(1)

Definition of board

- 2.009 In 2.008 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 fixed for the accommodation.

Reg 2

Assessing "less dependent" residents

2.010 It is up to the local authority how much it decides is reasonable to disregard of the resources of a person who is "less dependent". Factors to be taken into account include:

- the resident's commitments, i.e. to what extent is he incurring costs directly for necessities such as food, fuel and clothing
- the degree of the resident's independence, i.e. to what extent should he be encouraged to take on expenditure commitments
- whether he needs a greater incentive to become more independent, e.g. he may be encouraged to take on paid employment if most or all of his earnings and any Working Tax Credit received are disregarded.

Reg 5

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

SECTION 3 - TEMPORARY RESIDENTS

Who is a temporary resident?

3.001 The definition of temporary resident allows the LA 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 intermediate care, or there is uncertainty that permanent admission is required. For a fuller explanation of how to deal with residents receiving intermediate care see 3.015 below.

3.001B An admission is permanent if the agreed intention is for the resident to remain in residential accommodation.

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 continues to be paid in respect of his home address.

LAs should note, however, that Income Support/Pension Credit housing costs and HB may only be payable for 13 weeks in some circumstances (see LAC(95)7 paras. 7 to 11).

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

3.004 It must be recognised that a stay, which was initially expected to be permanent, may turn out to be temporary (e.g. the resident's condition improves dramatically when it was not expected to do so). In such cases, it would be unreasonable to continue to apply to that resident any rules which would have affected 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 It must also be recognised that a stay, which was initially expected to be temporary, may turn out to be permanent. In such cases, it would be unreasonable to assess the resident's charge as if 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 temporary stay

Up to 8 weeks

3.005 An assessment of ability to pay is not required for the first eight weeks of a temporary stay. It will be for the local authority to decide in each case whether to make an assessment. Where the local authority decides it is appropriate to make an assessment, follow the guidance in Sections 4 to 13. Where no assessment is made, the charge is the amount it appears reasonable to the LA for the resident to pay.

Section 22(5A)

After 8 weeks

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

Income Support/Pension Credit for temporary residents

- 3.006A 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 or £12,000 respectively. This may mean that, where the resident has capital of above £8,000 but not more than £19,500, 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 LA decide to make an assessment straight away, or from the eighth week, his ability to pay should be assessed in accordance with the following paragraphs.

Capital

- 3.008 Disregard the dwelling normally occupied as the resident's home where:
- a.) the resident intends to return to occupy that dwelling and that the dwelling is still available to him; **or**
 - b.) he is taking reasonable steps to dispose of the property in order to acquire another more suitable home to which he will return.

Schedule 4 para.1

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

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 HB in full.
Schedule 3 para.3
- 3.010A From 1st April 2003, under new "Supporting People" arrangements, LAs have powers 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 the LA to residents or to housing or support providers on a resident's behalf. If liability to meet charges continues whilst a resident is in a care home, payments from the LA to meet the charges can be disregarded in the assessment of a resident's income or capital. Payments that should be disregarded are those which are made to meet charges that are of a kind that would have qualified for Housing Benefit or Income Support/Minimum Income Guarantee prior to 1 April 2003 and may include payments to meet charges for:
- a warden in sheltered housing;
 - emergency alarms;
 - cleaning of rooms and windows if the resident or someone in his household is unable to clean them himself;
 - general support and counselling to assist a resident to comply with terms of the tenancy agreement, for example, maintaining the safety and security of their dwelling, or keeping the interior of the dwelling in an appropriate condition.

Additionally, where a resident is paying part or all of the cost of a housing support service himself under the Local Authorities (Charges for Specified Welfare Services) (England) Regulations 2003, this amount should be disregarded from the assessment of income and capital.

Schedule 3 paras 28D and 28E, Schedule 4 paras 22 and 23

3.011 Income Support/**Pension Credit**, Housing Benefit and Supporting People payments may not meet the full cost of continuing home commitments. Where there are extra costs, disregard such additional amount as appears reasonable. Extra costs might be:

- a fixed heating charge;
- water rates;
- mortgage payment or rent not met by Income Support/Pension Credit/Housing Benefit
- service charges not met by Income Support/Pension Credit/Housing Benefit
- insurance premiums
- housing support charges not met by the LA

Schedule 3 para.27

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

- interest charges on:
 - hire purchase agreement to buy the dwelling occupied as the home (e.g. a caravan)
 - loans for repairs or improvements to the dwelling
 - mortgage payments
- ground rent or other rental relating to a long tenancy
- service charges (e.g. regular charge payable to the management company of a block of flats),
- housing support charges
- any insurance premiums
- standard charges for fuel
- water rates
- payments under:
 - co-ownership scheme
 - tenancy agreement or licence of a Crown tenant

Schedule 3 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

3.012A Any cash payment made to a temporary resident in lieu of concessionary coal is fully disregarded.

Schedule 3 para 28

Couples

- 3.013 Where one or both members of a couple are temporarily in residential accommodation see **Section 4** for their assessment.

Attendance Allowance (AA) / Disability Living Allowance (DLA) Care Component

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

Schedule 3 para.6

Intermediate Care Services

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

SECTION 4 - COUPLES

LA treatment of couples

- 4.001 Under the National Assistance Act 1948, the LA has no power to assess a couple according to their joint resources. Each person entering residential care should be assessed according to their individual means, although the liability of a married person to maintain their spouse (see Section 11) should be considered in each case.
- 4.002 Similarly, the LA has no powers to use the assessment regulations as a basis for assessing how much a liable spouse should be able to contribute towards the cost of the residential accommodation.
- 4.003 The LA should attempt to identify cases where a resident is the main recipient of the couple's income, and the assessment of the resident's financial contribution could result in a substantial reduction in the amount of income remaining for the spouse at home. In such cases the LA should consider increasing the resident's personal expenses allowance, as described in Section 5 of this guide, in order to leave enough for them to continue to support their partner at home. The use of this discretion should be considered and negotiated in the light of the individual circumstances of each case, but it would be reasonable for the LA to take into account factors such as the usual standard of living of the spouse at home, and if the spouse has higher than average outgoings for whatever reason. However, the weight to be attached to these considerations will be for the authority themselves to determine.

Capital limits for couples

- 4.003A Where a resident is one of a couple (irrespective of whether the resident's stay is permanent or temporary, or whether the other member of the couple is also a resident or remains in the former home) the resident must have in excess of £19,500 capital in his own right, or his share of jointly owned capital must be in excess of £19,500 before he is excluded from support on the grounds of capital.

Temporary residents

- 4.004 Where a member, or both members, of a married couple are admitted to residential accommodation on a temporary basis their ability to contribute towards the charge should be assessed individually according to Section 3 of this guide. In every case, the LA must assess each resident separately. Disregard any Income Support/Pension Credit awarded in respect of home commitments. Income Support/Pension Credit and Housing Benefit may not meet the full cost of continuing home commitments. Where there are extra costs, disregard such additional amount as appears reasonable. Extra costs might include:

- a fixed heating charge;
- water rates;
- mortgage payments, rent or service charges not met by Income Support/Pension Credit/Housing Benefit
- insurance premiums

- 4.004A It will be important for councils to consider most carefully the needs of couples in receipt of Pension Credit in this regard as, on the face of it, they now receive less benefit than younger individuals.

Permanent residents

- 4.005 It will be useful to know how Income Support/Pension Credit will be calculated in these cases, this may give a guideline as to how much the spouse remaining at home is likely to be able to contribute towards the charge. Where Income Support/Pension Credit is being paid for a couple

it would be reasonable to expect the partner receiving the Income Support/Pension Credit to contribute towards the charge for accommodation for the other partner a sum equivalent to the Income Support/Pension Credit payable for that partner. If Income Support/Pension Credit is paid to the partner in residential accommodation, the full amount will have to be taken into account but the LA should consider varying the personal expenses allowance, as described in Section 5, in order to leave enough for the partner at home to meet their expenses. The council should discuss with the partner remaining at home any financial commitments that may be taken into account.

4.006 Where one, or both, members of a couple are admitted permanently to residential accommodation the LA must assess their ability to contribute towards the charge according to their individual resources following the rules laid down in Sections 5 to 13.

Note : paragraphs 4.007 to 4.019 have been deleted and reproduced as Annex H

SECTION 5 - PERSONAL EXPENSES ALLOWANCE

Purpose of the personal expenses allowance

- 5.001 The personal expenses allowance is intended to enable residents to have money to spend as they wish. Councils are reminded that PEA should not be spent on services that have been contracted for by the council and/or have been assessed as necessary to meet individuals' needs by the council and the NHS, either separately or jointly.

Amount of personal expenses allowance

- 5.002 In assessing a resident's ability to pay for his accommodation, the LA is required to ensure that he retains an amount for personal expenses. *Section 22(4)*
- 5.003 The amount allowed in the assessment for personal expenses is laid down each year in the National Assistance (Sums For Personal Expenses) Regulations and is the same for each resident whether they are in a LA run home or an independent sector home. It is currently **£17.50**.
- 5.004 Residents should be left with the full PEA following the financial assessment of their resources.

Varying the amount of personal expenses allowance

- 5.005 Under the Section 22(4) of the National Assistance Act of 1948 local authorities have the power to allow a different amount from that prescribed for personal expenses in special circumstances. Examples of where a LA might consider allowing a different amount are:

- someone who does not qualify as a "less dependent" resident solely because he lives in registered private or voluntary sector accommodation or in local authority accommodation where board is provided and therefore cannot be assessed under the rules described in Section 2 but who, nonetheless, needs to retain more of his income in order to help him lead a more independent life, for example if he is working.
- where a person in residential accommodation has a dependent child, the LA should consider the needs of the child in setting the personal expenses allowance in addition to disregarding any Child Tax Credit in payment. This applies whether or not the child has accompanied the person into the accommodation, and will be particularly important where the resident has income which is taken fully into account (see Sections 8 and 9 of this guidance) in the charging assessment (e.g. Income Support/**Pension Credit**, and Child Benefit and Child Support Maintenance Payments where the child is accommodated with the resident under Part 3 of the National Assistance Act 1948).
- where a person temporarily in residential accommodation receives Income Support/**Pension Credit** including an amount for a partner who remains at home (see 4.006) the LA should consider the needs of the person at home in setting the personal expenses allowance.
- local authorities are required to ignore half of a resident's occupational pension where the resident is paying half of that pension to a spouse (see 8.024A). This disregard does not cover unmarried couples. Where the person in residential accommodation is the main recipient of an **unmarried** couples' overall income (e.g. occupational pension), the LA can use their discretion to increase the resident's personal expenses allowance in special circumstances to enable the resident to pass some of that income to the partner remaining at home. In considering this the LA should bear in mind the effects it could have on benefits such as Income Support/**Pension Credit**, Housing Benefit and Council Tax Benefit of increasing the partner's income, as increasing the partner's income in this way may lead to a reduction in benefits resulting in the partner being no better off.

- where a person is responsible for a property that has been disregarded, for example because they are temporary or they qualify for one of the mandatory property disregards, the LA should consider increasing the person's PEA to meet any resultant costs.

SECTION 6 - CAPITAL

What is capital?

6.001 A resident's resources are either capital or income. It may not always be obvious whether a payment should be treated as capital or income, but generally, a payment of capital is one which is:

- a) not in respect of a specified period; and
- b) not intended to form part of a series of payments.

Types of capital

6.002 Examples of capital are shown in the following list. The list is intended as a guide and is not exhaustive.

- Buildings
- Land
- National Savings Certificates and Ulster Savings Certificates
- Premium Bonds
- Stocks and shares
- Capital held by the Court of Protection or a Receiver appointed by that Court
- Any savings held in:
 - building society accounts - income which is paid into an account becomes capital once the period over which it is taken into account as income expires.
 - bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Girobank and Trustee Savings Bank - income which is paid into an account becomes capital once the period over which it is taken into account as income expires.
 - SAYE schemes
 - Unit Trusts
 - Co-operative share accounts
 - cash
 - trust funds (see Section 10)

Treatment of Investment Bonds

6.002A 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 councils should seek the advice of their legal departments when they arise. However it is possible to offer some general advice and councils are referred to the Social Security Commissioners decision R (IS) 7/98.

6.002B Councils are advised that if an investment bond is written as one or more life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset in the financial assessment for residential accommodation (see paragraph 15, schedule 10 of the income Support (General) Regulations 1987. In contrast, the surrender value of an investment bond without life assurance is taken into account.

6.002C 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 8.014A)

Effect of capital

Capital limits

6.003 A resident with capital of more than £19,500 is liable to pay the standard charge for the accommodation, if in an LA home, or the full amount of the contracted fee if in an independent sector home. If a resident has more than £19,500 there is no need to make a wider assessment of his ability to pay. Where a resident is one of a couple, the resident is liable to pay the standard rate or full contracted fee if they have more than £19,500 in their own right; or if their own capital and their share of jointly held capital is more than £19,500.

Reg 20

6.004 Capital of £12,000 or less is fully disregarded.

6.005 Capital over £12,000 and up to £19,500 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 £19,500 or less but more than £12,000, assess the resident's ability to pay in the normal way and take into account, as *weekly income*, £1 for every complete £250 or part of £250 over £12,000. This is called "tariff income".

Reg 28

A tariff income table is at Annex B

Examples

1. The resident has £13,250 capital. £12,000 is disregarded and tariff income of £5 is taken into account as income.
2. A resident has £12,100 capital. £12,000 is disregarded and tariff income of £1 is taken into account as income.

N.B. Tariff income is meant to represent an amount that a resident with capital over a certain limit should be able to contribute towards his accommodation costs, not the interest earning capacity of that capital.

6.006A When a resident who is subject to the 12-weeks property disregard tops-up from capital resources between the lower and upper capital limits, the level of tariff income that applies during those 12 weeks of topping-up is the same as it would be if the person were not using capital to top-up. (See 8.019B)

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 beneficial 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.

Examples

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

6.009 SPARE

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)

Examples

1. A resident and her daughter have £21,000 in a joint building society account. The resident contributed £8,500 and the resident's daughter, £12,500. Treat the resident as owning £10,500.

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 purposes of valuation only the value of a capital asset (for example property) **other than** National Savings Certificates (see 6.018) is the current market or surrender value, whichever is higher, **less**:

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

Reg. 23(1)(a)

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

Reg. 23(1)(b)

6.012 A capital asset may have a current market value (e.g. stocks or shares) or a surrender (e.g. premium bonds) value. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held, e.g. the values of stocks and shares or unit trusts are quoted in newspapers.

6.013 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 £19,500; or

- b) £12,000 or less

it is not 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.

- 6.016 SPARE

Debt secured on asset

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

Example

A resident owns 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

- 6.018 The value of National Savings Certificates is:
- a) if sale of the issue ceased before the first day of the July immediately before the resident entered residential care, the price they would have realised on that 1st July if they had been purchased on the last day of the issue; and
 - b) in any other case, the purchase price. *Reg 23(2)*

Annex C is a table of the value of each issue

Disregards on capital

- 6.019 Different types of capital will be disregarded for different periods as covered in paragraphs 6.020 to 6.035.

Capital held abroad

- 6.020 If capital is held in a country outside the UK (i.e. England, Scotland, Wales, Northern Ireland,) the amount to be taken into account in the assessment of the resident's ability to pay will depend on the conditions for transfer to the UK. *Reg.24*

Transfer of capital to UK not prohibited

6.021 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.

Sources of valuation

6.022 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

6.023 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

6.024 Where the resident represents that the value of any capital which he holds in a country outside the UK cannot be **wholly** transferred to the UK because of some prohibition in that country (e.g. currency restrictions) the LA should require evidence confirming this fact. Acceptable evidence of the prohibition on transfer of value to the UK would include documents/letters from a Bank either in this country or abroad, or from a Government official or solicitor.

Evidence required of value

6.025 If the evidence shows that some restriction prohibits the transfer of the value of any of the resident's assets to the UK, the LA should seek the following evidence

- details of the asset
- its value in the country in which it is held
- whether any money is available directly from the asset and, if so, the amount and date it would become payable
- whether the asset is for sale and, if so, the progress and prospects of such a sale
- the nature and terms of the restriction being imposed which prevents the transfer of all the capital to the UK (for example whether some capital can be transferred immediately and the remainder subsequently at intervals).

Action on receipt of evidence

- 6.026 1. If the transfer of the capital is prohibited, the LA should take into account the value that a willing buyer would pay in the UK for the assets. This may quite possibly be less than the market or surrender value in the foreign country.
2. If restrictions do not exist, the capital should be valued as in 6.020 to 6.023.

Capital not immediately realisable

- 6.027 Capital which is not immediately realisable (e.g. National Savings Bank investment accounts which require one month's notice or Premium Bonds which may take several weeks to realise) should be taken into account in the normal way at its face value.

Disregarded indefinitely

- 6.028 The capital assets listed below are disregarded indefinitely:

- property in specified circumstances (see Section 7)
- surrender value of any:
 - life insurance policy *Schedule 4 para.13*
 - annuity *Schedule 4 para.9*
- payments of training bonus up to £200 *Schedule 4 para.17*
- payments in kind from a charity *Schedule 4 para.17*
- any personal possession such as paintings or antiques unless they were purchased with the intention of reducing capital for the purpose of reducing the LA charge (see para 6.065) *Schedule 4 para.8*
- any capital which is to be treated as income or student loans (see para 6.036 to 6.038 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 Payment)(No.2) Trust
 - the Fund (payments to non-haemophiliacs infected with HIV)
 - the Independent Living Fund
 - the Independent Living (Extension) Fund
 - the Independent Living (1993) 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) *Schedule 4 para.10 and 19*
- the value of a right to receive:
 - income under an annuity *Schedule 4 para.9*
 - outstanding instalments under an agreement to repay a capital sum *Schedule 4 para.13*
 - payment under a trust where the funds derive from a personal injury *Schedule 4 para.10*

- income under a life interest or a life rent *Schedule 4 para.11*
 - income (including earnings) payable in a country outside the UK which cannot be transferred to the UK *Schedule 4 para.12*
 - an occupational pension *Schedule 4 para.15*
 - any rent *Schedule 4 para.15*
- any Social Fund payment *Schedule 4 para.13*
- refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home *Schedule 4 para.13*
- any capital resource which the resident has no rights to as yet, but which will come into his possession at a later date, e.g. on reaching a certain age.(reversionary interest) *Schedule 4 para.4*
- payments from the Department for Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement *Schedule 4 para.17*
- the amount of any bank charges or commission paid to convert capital from foreign currency to sterling *Schedule 4 para.15*
- payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit) *Schedule 4 para.17*
- community charge rebate / council tax rebate *Schedule 4 para.17*
- money deposited with a Housing Association as a condition of occupying a dwelling
- any Child Support Maintenance Payment (unless the child is accommodated with the resident under **Part 3** of the National Assistance Act 1948 (mother and baby unit) - in this case take the payment fully into account) *Reg 6A*
- the value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's or person's spouse's imprisonment or internment by the Japanese during the Second World War. *Schedule 4 para 20*
- any payment made by a council under the Adoption and Children Act 2002 (under paragraph 3 of Schedule 4 to this Act), whether income or capital.

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 £22,500 capital. When calculating how much capital should be taken into account, the LA disregards the first £10,000 of the residents capital. The normal capital rules are then applied to the remaining £12,500. In this case £12,000 of the residents remaining capital would be completely disregarded in addition to the £10,000 ex-gratia payment, and the tariff income rules applied to the remaining £500.

- Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at time of death of victim) (See also 6.030A) *Schedule 4 para 21*

Disregarded for 12 weeks

6.028A In the case of a resident who becomes a permanent resident on or after 9 April 2001 the value of any dwelling which he would otherwise normally occupy as his only or main residence subject to meeting the qualifying conditions that can be found in paragraph 12 of the Annex to LAC(2001)10. (see also 7.002A in CRAG)

Disregarded for 26 weeks or longer

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

- assets of any business owned (or part-owned) by the resident in which he was a self-employed worker, where he has stopped work due to some disease or disablement, but intends to take up work again when he is fit to do so (26 weeks from the date he took up residence in the residential accommodation, or longer where appropriate)
Schedule 4 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.2
- premises which the resident intends to occupy as his home where essential repairs or alterations are required (26 weeks from the date the resident takes action to effect the repairs, or longer where appropriate)
Schedule 4 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 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 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

- Disabled Person's Tax Credit
- Working Tax Credit
- Child Tax Credit
- Housing Benefit
- Special payments to pre-1973 war widows (see 8.046 for details of these payments)

As the above payments will be paid for specific periods, they should be treated as income over the period for which they are payable; any money left over after the period for which they are treated as income has elapsed should be treated as capital. *Schedule 4 para.6*

e.g. a resident is assessed as being able to pay £75 per week pending receipt of Income Support/Pension Credit. It is explained to the resident that the charge will be re-assessed once Income Support/Pension Credit is received and that back payments will be required. Although not required to do so, the resident chooses to make payments of £90 per week. After six weeks arrears of Income Support/Pension Credit at £35 per week (£210) are received. The charges are re-assessed and the resident is required to pay £110 per week. As the resident has been paying £15 per week more than required, the arrears payable are £120 rather than the full £210 Income Support/Pension Credit arrears. The remaining £90 becomes capital and is disregarded for 52 weeks.

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

Schedule 4 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 victim's parent (or guardian) for 2 year from the date of death of the victim (or from the date of payment from the trust, if later) or
- a dependent child or young person until they cease to be a member of the family (i.e. until they leave school between ages of 16 and 17) – but with a minimum of 2 years

Schedule 4 para.5

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 LA should request

1. information which describes the nature of the business asset
- and** 2. the resident's estimate of the length of time necessary to realise the asset, or the resident's share of the assets
- and** 3. a statement of what, if any, steps have been taken to realise the assets, what these steps were and what is intended in the near future

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

Action on receipt of information

- 6.034 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:
- the total of the instalments outstanding at the time the resident first becomes liable to pay for his accommodation or, in the case of a temporary resident whom the LA have decided not to charge (see para 3.005), the first day on which the LA decide to charge for the accommodation; and
 - the amount of other capital held by the resident.

If the total of a. and b. is over **£19,500**, treat the instalments as income.

If it is **£19,500** or less, treat each instalment as capital.

Reg.16(1)

Payments under an annuity

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

Reg.16(2)

Third party payments made under an agreement to meet excess fees

- 6.037A Where a LA 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).

Regulation 16(4)

- 6.037B Where a LA agrees to place a resident in a higher price home on the grounds that a resident subject to a deferred payments agreement or the 12-weeks property disregard is willing to contribute towards the higher fees, any such additional payment made by the resident should be treated as part of the income of the resident, except where the additional payments are to be part of the deferred payments. Where such additional payments are made by lump sum, that lump sum 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.

Regulation 16A

- 6.037C In the case of deferred payments agreements, councils should note that the resident's home, which has a capital value, once realised is used to pay back councils for the deferred contributions agreed between the resident and council. See 8.019B for fuller details of the resources that may be used by the resident to meet additional payments.

Reg.4(2)(c) National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England)(Regulations) 2001

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 lifeboatman
- a member of the territorial or reserve forces.

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 not still in work, as the payment does not form part of the employee's regular income and would have to be repaid.

Reg.22(5)

Example

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

The LA 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 LA they are not treated as belonging to the resident, see 8.062A). *Reg.22(8)*

Arrears of contributions to a child's custodian

- 6.046 Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child should be treated as capital. *Reg.22(8)*

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. That 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
1. capital held in a discretionary trust
 2. capital held in a trust derived from a payment in consequence of a personal injury
 3. any loan which could be raised against a capital asset which is disregarded, for example the home

Reg.25(2)

- 6.054 The LA should distinguish between

1. capital already owned by the resident, but which in order to realise he must make an application for, for example
 - money held by the resident's solicitor
 - Premium Bonds

- National Savings Certificates
 - money held by the Registrar of a County Court which will be released on application;
and
2. capital **not** owned by the resident, but which will become his on application being made, for example
- an unclaimed Premium Bond win

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

Date to be taken into account

- 6.055 When the LA treats capital available on application as notional capital they should only do so from the date it could be acquired by the resident.
- 6.056 SPARE

Deprivation of capital

General

- 6.057 The LA may feel that a resident has deprived himself of a capital asset **in order to** reduce his accommodation charge. If this is the case the LA may treat the resident as still possessing the asset. The following factors will need to be considered.

Reg.25(1)

6.057A Pension Credit will slightly relax Income Support rules relating to notional capital. In Income Support, individuals may be treated as if they still possess capital in circumstances where they have deliberately deprived themselves of it in order to maximise their benefit entitlement. Pension Credit specifies circumstances in which this would not apply. For example, individuals who choose to use their savings to reduce or clear a debt (including debts not immediately repayable) will no longer be considered as having deliberately deprived themselves to maximise entitlement. Pension Credit will also have slightly different rules for what resources an individual may be assumed to have when they apply for benefits. The deprivation/resources on application “rules” within the residential care charging system are retained, in line with the rules for Income Support.

Forms of capital to be considered

- 6.058 The LA should only consider questions of deprivation of capital when the resident ceases to possess capital which would otherwise have been taken into account.
- e.g.** a resident gives a diamond ring worth £2,000 to her daughter the week before she entered residential accommodation. The LA should not consider deprivation as, had the ring still been possessed, it would not be taken into account as capital. **However**, if the resident had purchased the ring immediately prior to giving it to her daughter with £2,000 which had previously been in a Building Society account, deprivation should be considered.

Ownership

- 6.059 The LA should decide from available evidence whether the resident owned the capital (see 6.007 and 6.008 for details of ownership).

Has deprivation occurred?

6.060 It is up to the resident to prove that he no longer has a resource. Failure to do so will result in the LA treating the resident as if he still **possesses** the **actual** capital. Examples of acceptable evidence of the disposal of capital would include

- a trust deed
- deed of gift
- receipts for expenditure
- proof that debts had been repaid

6.061 **Examples** of where a person has deprived themselves of capital (although not necessarily for the purposes of avoiding a charge for accommodation)

- A lump-sum payment has been made to someone else (e.g. as a gift or to repay a debt)
- Substantial expenditure has been incurred (e.g. on an expensive holiday)
- The title deeds of a property have been transferred to someone else
- Money has been put into a trust which cannot be revoked
- Money has been converted into another form which would fall to be disregarded (e.g. personal possessions)
- Capital has been reduced by living extravagantly (e.g. gambling or following a much higher standard of living than the resident could normally afford)
- Capital has been used to purchase an investment bond with life insurance. Councils will wish to give consideration, in respect of each case, to whether deprivation of assets has occurred i.e. did the individual place his capital in such an investment bond so that it would be disregarded for the purpose of the Assessment of Resources Regulations.

Purpose of disposing of an asset

6.062 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.

6.063 If, for example, a person has used capital to repay a debt, careful consideration should be given to whether there was a need for the debt to be repaid at that time. If it seems unreasonable for the resident to have repaid that debt at that time, it may be that the purpose was to avoid a charge for accommodation.

Examples

A person moves into residential accommodation and has a 50% interest in property which continues to be occupied by his spouse. The LA ignore the value of the resident's share in property while the spouse lives there but the spouse decides to move to smaller accommodation and so sells the former home. At the time the property is sold, the resident's 50% share of the proceeds could be taken into account in the charging assessment but, in order to enable the spouse to purchase the smaller property, the resident makes part of his share of the proceeds from the sale available to the spouse. In these circumstances, in the Department's view, it would not be reasonable to treat the resident as having deprived himself of capital in order to reduce his residential accommodation charge.

A person has £24,000 in the bank. He is about to move permanently to a residential care home, and before doing so, pays off £3,500 outstanding on a loan for home improvements. It would be

reasonable in these circumstances **not** to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.

A resident has £18,000 in a building society. Two weeks before entering the home, he bought a car for £10,500, which he gave to his son on entering the home. If the resident knew he was to be admitted permanently to a residential care home at the time he bought the car, it would be reasonable to treat this as deliberate deprivation. However, all the circumstances must be taken into account. If he was admitted as an emergency and had no reason to think he would not be in a position to drive the car at the time he bought it, it would not be reasonable to treat it as deliberate deprivation.

Timing of the disposal

- 6.064 The timing of the disposal should be taken into account when considering the purpose of the disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation.

Conversion of capital to personal possessions

- 6.065 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 6.028.
- 6.066 If the resident, in depriving himself of an actual resource, converted that resource into another actual resource of lesser value, he should be treated as notionally possessing the difference between the value of the new resource and the one which it replaced e.g., if the value of personal possessions acquired is less than the sum spent on them the difference should be treated as a notional resource.

Deprivation decided

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

Diminishing notional capital

Calculation of the rate at which notional capital should reduce

- 6.068 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 £14,250 plus actual capital of £6,000. This results in him having to pay the standard charge for the cost of the accommodation e.g. £250.

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 £86 and a personal allowance of, for example, £16 he would be assessed as paying a charge of £70.

The notional capital should be reduced by £180.00 per week i.e. the difference between the sum he has to pay because of the notional capital (£250.00) and the charge he would have had to pay if the notional capital did not exist (£70.00).

SECTION 7 - TREATMENT OF PROPERTY

General

- 7.001 If the capital asset is a house or land there are circumstances under which its value must be disregarded indefinitely and circumstances where its value must be taken fully into account. LAs also have an element of discretion over whether to take the value of a property into account (see 7.007)

Property to be disregarded

- 7.002 The value of a dwelling normally occupied by a resident as his home should be ignored if his stay in a residential care or nursing home is temporary and
- he intends to return to that dwelling, and the dwelling is still available to him; **or**
 - he is taking reasonable steps to dispose of the property in order to acquire another more suitable property for the resident to return to.

Only one dwelling can be disregarded in these circumstances.

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

Schedule 4 para

- 7.003 Where the resident no longer occupies a dwelling as his home, its value should still be disregarded where it is occupied in whole or in part by
- the resident's partner/ or former partner (except where the resident is estranged or divorced from the partner / former partner)
 - a lone parent who is the claimant's estranged or divorced partner
 - a relative (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 9 April 2001 the value of any dwelling which he would otherwise normally occupy as his only or main residence should be disregarded for the first 12 weeks of a permanent stay, subject to meeting the qualifying conditions which can be found in paragraph 12 of the Annex to LAC(2001)10. This may not be their first permanent admission to permanent residential care.

Schedule 4 para 2A

- 7.003B Where a person leaves residential care (where they have been living on 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.

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 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 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 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

- i. the person is receiving one (or more) of the following social security benefits incapacity benefit, severe disablement allowance, disability living allowance, attendance allowance, constant attendance allowance, or an analogous benefit;

or

- ii. the person does not receive any of the benefits listed in (i) but the degree of incapacity is equivalent to that required to qualify for any one of those benefits. Medical or other relevant evidence may be needed before a decision is reached.

Property acquired but not yet occupied

- 7.006 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 LA considers it reasonable to do so, they can disregard the value of premises not covered in paragraphs 7.002-006 in which a third party continues to live. LAs will have to balance the use of this discretion with the need to ensure that residents with assets are not maintained at public expense. It may be reasonable, for example, to disregard a dwelling's value where it is the sole residence of someone who has given up their own home in order to care for the resident, or someone who is an elderly companion of the resident particularly if they have given up their own home.

Schedule 4 para.18

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

Property to be taken into account

Legal and beneficial owners

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

Legal ownership

- 7.010 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 LA 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 **£19,500**, or when added to any other capital assets will take the total capital over **£19,500**, a precise valuation will not be needed. If the resident disputes the value, or there is some doubt as to the value, a professional valuation should be obtained.

Joint beneficial ownership of property

7.012 Where a resident is a joint beneficial owner of property, i.e. he has the right to receive some of the proceeds of a sale, it is the resident's interest in the property which is to be valued as capital, and not the property itself. The value of this interest is governed by

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

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

7.014A If ownership is disputed and a resident's interest is alleged to be less than seems apparent from the initial information, the local authority will need written evidence on any beneficial interest the resident, or other parties possess. Such evidence may include the person's understanding of events, including why and how the property came to be in the resident's name or possession. Where it is contended that the interest in the property is held for someone else, the local authority should require evidence of the arrangement, the origin of the arrangement and the intentions for its future use. The law of equity may operate to resolve doubts about beneficial ownership, by deciding what is reasonable by reference to the original intentions behind a person's action, rather than applying the strict letter of the law.

Example

The resident has a beneficial interest in a property worth £60,000. He shares the interest with two relatives. After deductions for an outstanding mortgage, the residual value is £30,000. One relative would be willing to buy the resident's interest for £5,000.

Although the value of the resident's share of the property may be £10,000, if the property as a whole had been sold, the value of just his share is £5,000 as this is the sum he could obtain from a willing buyer.

The resident's actual capital would be £4,500 because a further 10 percent would be deducted from the value of his share to cover the cost of transferring the interest to the buyer

Property held in a shared trust

7.015 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 6.063 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 property, the value of which takes the resident's total capital above **£19,500**, and the property is rented to tenants the resident will be assessed as able to pay the standard charge for the accommodation (because of the level of capital). It will then be for the resident to agree to pay the rental income (along with any other income) to the LA in order to reduce the accruing debt.

Deferred payments

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

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 three ways:

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

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

Income taken fully into account

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

- Most Social Security benefits (8.006)
- Annuity income (except home income plans) (8.013)
- Cash in lieu of concessionary coal for permanent residents only. (Cash in lieu of concessionary coal is disregarded for temporary residents)
- Child Support Maintenance Payments where the child is accommodated with the resident under **Part 3** of the National Assistance Act 1948 (see 8.038 for other cases)
- Home Office *ex gratia* incapacity allowances
- Income from certain disregarded capital (8.015)
- Income from an insurance policy (except mortgage protection insurance)(8.016)
- Income from certain sub-lets (8.017)

- Occupational Pensions
- Refund of income tax
- Third party payments made to meet higher fees (8.018)
- 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 8.042A for the treatment of certain dependency increases.

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

- Workmen's compensation (8.012) - see above and 3.014 for treatment of AA/CAA paid under the Workmen's Compensation Act

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:

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

ESDA and CAA are fully disregarded for temporary residents (see 3.014). REA is taken fully into account.

Pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme

- 8.009 These payments are made to people who are not entitled to workmen's compensation (8.012) or IIDB (8.008). They are taken fully into account. AA may be paid with these payments - see 3.014 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 3.014 and 8.006 for treatment of AA.

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

- 8.011 A widow may be entitled to WP or WMA. Both are taken fully into account. Widow's Payment (WPT) may be paid in addition to WP or WMA. WPT is paid as a lump sum and is treated as capital.

Workmen's compensation

- 8.012 These payments are awarded for industrial injuries and diseases resulting from employment before the IIDB scheme started. AA may be paid with workmen's compensation - see 3.014 and 8.006 for treatment of AA.

Annuity income

- 8.013 An annuity is a fixed sum payable at specified intervals (normally annually), in return for a premium payable either in instalments or as a single payment. The annuity income is payable for a specified period, such as the recipient's lifetime.

- 8.014 Income from an annuity is to be taken fully into account except when the annuity is:

- purchased with a loan secured on the resident's dwelling (partial disregard - see paragraphs 8.025 to 8.030); or
- a gallantry award e.g., Victoria Cross Annuity, George Cross Annuity (fully disregarded – see paragraph 8.043).

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 councils should seek the advice of their own legal departments 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 insurance, are treated as income and taken into account provided that any such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £16,000. (See also 6.002 A, B and C)

Income from certain disregarded capital

8.015 Income from capital will generally not be treated as income (see 6.042). However, income which comes from certain forms of disregarded capital is taken fully into account as income **for as long as the capital is disregarded**. This will be the case where the capital is:

- the normal dwelling of a temporary resident (but see 3.011 for disregard of income needed to cover housing commitments)
- business assets which the resident is taking steps to dispose of
- any capital held in trust which is as a result of a personal injury
- a dwelling which the resident intends to occupy as 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 16 and whom the resident is liable to maintain, or incapacitated
- premises belonging to the resident which are occupied in whole or in part by a third party, where the local authority are using their discretion to disregard those premises
- any premises which the resident intends to occupy as his home and in respect of which he is taking legal steps to obtain possession
- any premises which the resident intends to occupy as his home but which needs repairs or alterations in order for the resident to occupy

However, in the final five situations only, income which covers mortgage repayments, payments for water rates and council tax may be disregarded - see paragraph 8.037.

Schedule 3 para.14

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 8.033).

Income from certain sub-lets

8.017 When a resident sub-lets a part of their property which is not part of the living accommodation, for example the garage or the garden, the income from that sub-let is taken fully into account. The treatment of income from other sub-lets is described in paragraph 8.031.

Third party payment made to meet higher fees

- 8.018 Where a LA 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, the payments made by the third party should be treated as the resident's income and should be taken into account in full. A resident cannot use their own resources to pay for more expensive accommodation, ie act as their own third party.
- 8.018A A liable relative making maintenance contributions may not make a third party top-up from 1 October 2001. This limitation does not apply to any such top-up arrangements in place prior to 1 October 2001.
- 8.019 Other payments made by a third party should be treated in accordance with paras.8.051 to 8.057.
- 8.019A Except in circumstances set out in 8.019B, a resident cannot use their own resources to pay for more expensive accommodation, ie act as their own third party.
- 8.019B From 1 October 2001, a resident may top-up from his own resources as listed below only if they and the LA have made a deferred payments agreement or the resident is subject to the 12-weeks property disregard.

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

- Earnings disregarded by CRAG.
- Income disregarded by CRAG.
- Capital disregarded by CRAG (with the exception of the value of the resident's home that is subject to the 12-weeks property disregard).
- Other capital resources, excluding their home, with the provisos that :
- people can only top-up to the value of the lower capital limit;
- where these resources are used to top-up by residents who have resources above the lower capital limit, the level of tariff income that applies during those 12 weeks of topping-up is the same as it would be if the person were not using capital to top-up.

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

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

- 8.019C Where a resident is making top-up payments in the circumstances described in 8.019B, and where the value of the top-up is not added to the deferred contribution, the top-up shall be treated as part of the resident's income.

Reg.16A

Examples

A resident who has accessed the 12-weeks property disregard has a house valued at £50,000, other capital resources worth £14,000, and income of £150. He chooses to enter a residential care home where the actual cost is £600, while the council's usual cost for someone with his assessed need is £300. The council agrees to the placement, and the resident contributes income of £150 minus the personal expenses allowance, plus a tariff income of £10 per week to the costs of care. The council makes up the difference between its usual cost and the income contributed by the resident. The resident agrees to make a top-up of £300 (the difference between the actual cost and the council's usual cost). This reduces the resident's capital resources (excluding the value of the home) by £3,600 over the 12 weeks. Despite the fact that

the resident's capital resources fall because of the topping-up, the tariff income remains at the level of £10 per week.

A relatively young resident is subject to a deferred payments agreement. She has a property worth £30,000, other capital resources of £10,000 and income of £150 per week. The resident wishes to enter a residential care home where the actual cost is £400 per week, compared with the councils usual cost for someone with her needs of £300 per week. The council considers whether to agree to the placement and/or a deferred payments agreement in these circumstances. It knows that the resident must be left with capital resources to the value of £12,000 (the lower capital limit). Taking into account the deferred contributions that must be repaid from the sale of the house, the council calculates that this resident would spend her capital resources (that is, £30,000 for the house and plus £10,000 for the other capital resources) to the lower capital limit in approximately 2 years or so. As a result, the council advises the resident to consider a less expensive home, as it feels the resident would not be able to sustain her top-up contributions for the likely length of time she will spend in residential care.

*Regs 16A and 28; and Reg. 4
National Assistance (Residential Accommodation)
(Additional Payments and Assessment of Resources)
(Amendment) (England) Regulations 2001*

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 *Schedule 3 para.11*
- War disablement pension (8.023) - see also 3.014 and 8.006 for treatment of AA/CAA paid with WDP
- War Widows pension and War Widowers pension - but see 8.046 for War Widows and War Widowers Special Payments *Schedule 3 para 11*

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 two or more payments, which were due to be paid and therefore taken into account in different weeks, are in fact taken into account in the same week because it was not practical to take them into account for the weeks in which they were due to be paid.

Schedule 3 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 3.014 and 8.006 for treatment of AA and CAA.

Other disregarded sums

The savings disregard

8.024 A savings disregard based on qualifying income is introduced from 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 £77.45 per week there will be no Savings Disregard made.
- Where a resident is in receipt of qualifying income between £77.45 and £102.10 per week the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £4.50 whichever is less.
- Where a resident is in receipt of qualifying income in excess of £102.10 per week, and a savings credit reward is in payment, a flat rate savings disregard of £4.50 per week is made irrespective of how much the savings credit payment is.
- Where a resident has qualifying income above the limit for receiving a savings credit reward (£139.07) a flat rate savings disregard of £4.50 is made.

For couples

- Where a resident who is part of a couple and is in receipt of qualifying income of less than £123.80 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 £123.80 and £155.80 per week the savings disregard is made, which will equal the actual amount of the savings credit reward received or a sum of £6.75 whichever is less.
- Where a resident who is part of a couple and is in receipt of qualifying income in excess of £155.80 per week, and a savings credit reward is in payment, a flat rate savings disregard of £6.75 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 (£203.80) a flat rate savings disregard of £6.75 is made.

The values of £102.10 and £155.80 above represent the standard minimum guarantee for an individual and couple respectively. These amounts are increased to an appropriate minimum guarantee where individuals and couples qualify as severely disabled or as carers because of receipt of qualifying benefits. Details of Pension Credit are given in Annex I. Examples of how the savings reward is calculated, plus a list of qualifying income, are given in the document *Pension Credit and the Savings Disregard* on the website www.doh.gov.uk/scg/crag.

Occupational pensions, personal pensions and retirement annuity contracts

8.024A Where a resident is in receipt of an occupational pension, personal pension, or payment from a retirement annuity contract and has a spouse who is not living in the same residential care or nursing home, 50 per cent of the occupational pension, personal pension, or retirement annuity contract payment should be disregarded providing the resident passes 50 per cent on to his spouse. If the resident passes less than 50 per cent of any of these payments mentioned above, or none of them, to his spouse, for whatever reason, then the disregard should not be applied and the full amount in payment to the resident should be taken into account. The only other time when 50 per cent of any of the payments a married resident should cease to be disregarded is on death of the spouse or divorce.

Schedule 3 para 10A

8.024B Where an unmarried partner rather than a spouse is involved the LA should consider their discretionary powers to vary the PEA (see 5.005). This requirement to disregard 50 per cent of the occupational pension does not alter the LA's discretion to vary the PEA in special circumstances (see 5.005).

8.024C Where a spouse is legally entitled to receive part of the occupational pension, personal pension and retirement annuity contract (e.g. by means of a Court Order) that part of the pension does not belong to the resident and should, therefore, not form part of his income. Fifty per cent of the amount actually in payment to the resident should be disregarded in accordance with 8.024A

Annuity income from home income plan

8.025 There are different types of annuity plans (see paragraphs 8.013 and 8.014). Although income from an annuity is normally taken fully into account, this general rule does not apply to "home income plans". Under these schemes, a retired person who owns his home obtains a loan secured on the property. He uses part of the loan (or all of it) to buy an annuity which provides an income. He may also have used part of the loan for other purposes, for example improving or extending the property. The gross income from the annuity covers the interest payments on the original loan and provides an income for the person.

8.026 In order to qualify for any disregard on the income from a home income plan, one of the annuitants must still be occupying the dwelling as his home. This might happen where a couple have a joint annuity secured on the home, and one partner continues to occupy the home when the other moves permanently to a residential care or nursing home. In these circumstances, if the partner at home receives all the income and makes full repayments on the loan, it will probably be appropriate to treat the income as possessed by the partner at home. In this case, consider the question of liability of relatives -see Section 11.

8.027 Where neither the resident nor any other annuitant occupies the dwelling as his home, no disregard can be allowed on the income. When a single person moves permanently to a residential care or nursing home, therefore, and ceases to occupy the dwelling on which the loan is secured as his home, there will be no disregard on the income from the annuity. In these circumstances the property may be sold, and the loan repaid. Consider whether to take the value of the property into account as capital under the provisions in Section 7. Where the property is taken into account, the amount of the loan secured on the property will fall to be deducted in calculating the value.

8.028 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.8.029) 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.

8.029 The conditions to be satisfied before any amount may be disregarded from the weekly income are:

- a) the loan must have been made as part of a scheme which required that at least 90% of that loan be used to purchase the annuity; and
- b) the annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant; and
- c) the person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan; and
- d) the person who obtained the loan (or each of the annuitants where there are more than one), must have reached the age of 65 at the time the loan was made; and

- e) the loan was secured on a dwelling in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that dwelling; and
- f) the person who obtained the loan or one of the other annuitants occupies the dwelling as his home at the time the interest is paid.

8.030 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

8.031 Income from sub-letting (whether paid by the sub-tenant or a third party) carries a disregard only where the resident occupies the dwelling of which part is sub-let as his home. This will therefore apply only to assessing a temporary resident. The disregard is shown in Annex A. See also paragraph 8.017 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

8.032 A boarder is someone for whom at least one cooked meal is provided. Where a resident has income from a boarder (whether paid by the boarder or a third party) the first £20 of the income should be ignored **plus** half of any balance over £20.

Example

A temporary resident receives £50 per week as income from a boarder living in 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. *Schedule 3 para. 13*

Mortgage protection insurance policies

8.033 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.

8.034 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.

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

8.036 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 8.040 may no longer be in payment.

Income from certain disregarded capital

- 8.037 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 Water rates or payments of Council Tax made during the same period as that in respect of which the income was received.

Schedule 3 para. 14

Income fully disregarded

8.038 The following types of income are fully disregarded:

- See 3.014 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 (8.039)
- Supporting People payments made by a LA to or on behalf of a resident for housing support charges of a kind falling within Schedule 1B to the Housing Benefit (General) Regulations 1987 (as in force immediately before 1 April 2003. (3.010A)
- Certain charitable and voluntary payments (8.056)
- Child Support Maintenance Payments and Child Benefit, unless the child is accommodated with the resident under Part 3 of the National Assistance Act 1948 (mother and baby units - see 8.005)
- Child Tax Credit
- Guardian's Allowance
- Christmas bonus (8.041)
- Any payment from:
 - the Macfarlane Trust
 - the Macfarlane (Special Payments) Trust
 - the Macfarlane (Special Payment)(No.2) Trust
 - the Eileen Trust
 - the Fund (payments to non-haemophiliacs infected with HIV)
 - the Independent Living (Extension)Fund
 - the Independent Living (1993) Fund (8.042)
- Council Tax Benefit
- Disability Living Allowance (Mobility Component) and Mobility supplement
- Dependency increases paid with certain benefits (8.042A)
- Gallantry awards (8.043)
- Income frozen abroad (8.044)
- Income in kind (8.045)
- Social Fund payments (including winter fuel payments)

- Certain payments made to trainees (8.045A)
- War widows and widowers special payments (8.046)
- Work expenses paid by employer, and expenses paid to voluntary workers (8.049 and 8.050)
- Any payment made under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002. (For example, if a family adopts a brother and sister but need to build an extension to their house to make a bedroom for the sister, this type of payment for this would be disregarded)

Income Support/Pension Credit paid for home commitments

8.039 Under the **Income Support/Pension Credit** rules, an amount may be included in the award of **Income Support/Pension Credit** in respect of specified expenses to maintain the home address. Payment may continue for up to 52 weeks.

8.040 Any **Income Support/Pension Credit** a resident receives is normally taken into account in full in assessing the charge. However, where the award includes an amount for home commitments, that part of the **Income Support/Pension Credit** award is fully disregarded. The amount awarded for home commitments is shown as a separate entry on form A124(clerical) or computer produced Award Calculation Sheet which **DWP** sends to the resident.

Schedule 3 para.26

Christmas Bonus

8.041 A Christmas Bonus is paid each year in the week starting the first Monday in December. It is paid to people who are entitled to specified benefits, for example:

- Attendance Allowance;
- Retirement Pension;
- Widow's and War Widow's and Widower's Pensions;
- War Disablement Pension;
- Incapacity Benefit or Severe Disablement Pension;

The Christmas bonus is fully disregarded in assessing the charge.

Schedule 3 para.22

Payments from any of the Macfarlane Trusts, the Fund or the Independent Living Funds

8.042 Payments from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payment)(No.2) Trust, the Eileen Trust, the Fund, the Independent Living (Extension) Fund or the Independent Living (1993) 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) Living Funds should cease when someone enters residential accommodation.

Schedule 3 para.24

Dependency increases paid with certain benefits

8.042A Dependency increases for adults can be paid with Job Seeker's Allowance, Maternity Allowance, Incapacity Benefit, Severe Disablement Allowance, Retirement Pension, Carer's Allowance and Unemployability Supplement paid with Industrial Injuries Disablement Benefit. Child Dependency Increases can be paid with Jobseekers Allowance (where the beneficiary has reached pension age), Incapacity Benefit, Severe Disablement Allowance, Retirement Pension, Carer's Allowance and Unemployment Supplement (as above) if claimed before April 2003. Where the dependent does not live with the resident, the increase will only be payable if

the resident pays over at least the amount of the increase to the dependent. Where the increase is being paid over to the dependent, the amount of increase should be disregarded in full.

Schedule 3 para.28B

8042B Child Tax Credit is paid in place of child dependency increases in claims for Job Seeker's Allowance, Incapacity Benefit, Retirement Pension, Carer's Allowance and Unemployment Supplement from 7th April 2003. Where Child Tax Credit is in payment, it should be disregarded in full, regardless of whether or not the child is accommodated with the resident.

Schedule 3, para 28G

Gallantry awards

8.043 Gallantry awards are:

- Victoria Cross Annuities
- George Cross Annuities

These payments are fully disregarded.

Schedule 3 para.8

Income frozen abroad

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

Schedule 3 para.16

Income in kind

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

Schedule 3 para.14

Payments made to trainees

8.045A 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

8.046 War widows and war widowers special payments are made to the widows of men or widowers of women who died from injuries or illness, which resulted from service ending before 31 March 1973. The special payments are intended to compensate those widows and widowers who did not benefit from the amendments to the Armed Forces Pension Scheme. These payments, which are made under the legislation listed in Annex G, are fully disregarded.

8.047 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.

8.048 War widows and *war widowers* special payments and analogous payments can normally be identified by the amount contained in the war widows and war widowers pension order book. In cases of doubt, contact the **Veterans Agency** at Norcross, Blackpool, Lancashire tel. 0800 169 2277. They will need to know the name and reference number (shown on the pension book) of the war widow and widower.

Schedule 3 para.25

Work expenses paid by employer

- 8.049 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

- 8.050 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

- 8.051 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.
- 8.052 Generally, a charitable or voluntary payment which is not made regularly and is not due to be made regularly is treated as capital. *Reg.22(7)*
- 8.053 Payments which are made regularly or due to be made regularly are either:
- a) subject to a £20 disregard; or
 - b) fully disregarded.

£20 disregard

- 8.054 Disregard £20 of any charitable or voluntary payment if it is intended and used for any item which is already covered by the standard charge for the home, e.g. food or heating, subject to the overall disregard mentioned in 8.022.
- 8.055 SPARE
- 8.056 SPARE

Payments to meet higher fees

- 8.057 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 LA would normally pay. These payments are intended to allow the resident some freedom of choice about where they wish to live. See paras 8.018 - 8.019 for treatment of this income. *Schedule 3 para.29(6)*

Income treated as capital

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

Notional income

- 8.059 A resident may be treated as having an income which he does not actually receive in a variety of situations. Such income is described as notional income and may be:
- a) income which is paid to the LA by a third party to contribute towards the fees of a home.
 - b) income which would be available on application, see 8.065 about Rehabilitation Allowance.

- c) income which is due but has not yet been paid
- d) income which the resident has disposed of

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

Reg.17

Actual and notional income

- 8.060 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

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

Payments to the LA by a third party

- 8.062 Where a third party is making a contribution towards the cost of the accommodation, the amount the third party is paying should be treated as the notional income of the resident. This is to ensure that the LA take the money into account when assessing the charge.

- 8.062A Where a third party makes a payment directly to the LA in respect of a resident's arrears of charges for residential accommodation it should not be treated as the resident's notional income and will not therefore need to be taken into account as available towards the resident's current charge. In order to avoid the payment being regarded as the resident's capital (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 LA.

- 8.063 The remaining forms of notional income depend on the LA 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

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

Reg.17(2)

Amount of income

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

1. income payable under a discretionary trust
2. income payable under a trust derived from a payment made in consequence of a personal injury
3. Working Families Tax Credit
4. Disability Working Allowance
5. Rehabilitation Allowance

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

- 8.066 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)

8.067 Any potential entitlement to Severe Disablement Allowance should not be taken into account. This is because entitlement to this benefit is based on medical conditions which the LA can not assume are satisfied. *Reg.17(2)*

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

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

Date taken into account

8.069 The income should be taken into account from the date it could be expected to be acquired if an application was made. In considering the earliest date that account can be taken of the income the LA should:

1. assume the application was made on the date the LA first became aware of the possible income; **and**
2. take into account any time limits which might limit the period of arrears. *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 LA becomes aware of the possible entitlement on 30/9/93. As retirement pension can only be backdated a year from date of claim the LA should only take it into account as income from 1/10/92.
2. The LA become aware that a resident aged 64 is not receiving an occupational pension to which he would have been entitled from the age of 60. On his 65th birthday his former employers state that he will be paid all the pension due from age 60. The LA should take the pension into account from age 60.

Personal Pensions and Retirement Annuity Contracts

8.069A Where a resident, aged 60 or over, has a personal pension plan and he has not purchased an annuity, or arranged to draw the maximum income available from the plan, notional income should be assumed in the assessment of charges. This assumption should also apply to Retirement Annuity Contracts from which income can be derived from age 60 by the purchase of an annuity. The Jobcentre Plus/the Pension Service will contact the pension provider for details of the income which could be payable where Income Support/Pension Credit is claimed. For Income Support/Pension Credit claimants LAs should liaise with the Jobcentre Plus/the Pension Service to obtain details. Where no Income is claimed the LA will need to seek the resident's permission to approach the pension provider to obtain details of the income which could be received. This notional income should then be taken into account in the assessment of charges. The assumption of notional income from personal pensions and Retirement Annuity Contracts only applies to residents aged 60 or over. *Reg.17(2)*

Income due but not paid

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

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

- a. the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; **or**
- b. The trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

Reg.17(2)

8.070A **Examples** of where to take into account income which is due to the resident, but which has not been paid are:

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

Deprivation of income

8.071 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 LA find that he has sold his right to receive the occupational pension thereby reducing the charge he is assessed as having to pay. The local authority decides that this was done for the purpose of reducing the charge and the occupational pension was taken into account.

Meaning of deprive

8.072 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

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

Was it the resident's income?

8.074 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?

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

- 1. he has been receiving or was due to receive **and:**
- 2. would have continued to receive had he not relinquished or transferred it.

8.076 It is up to the resident to prove that they no longer have the income. If he cannot prove this, the LA should treat the resident as still possessing the **actual** income.

Purpose of the disposal of income

8.077 There may have been more than one purpose of the disposal of income only one of which is to avoid a charge, or a lower charge. This may not be the resident's **main** motive but it must be a **significant** one.

Timing of the disposal of income

- 8.078 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.
- 8.079 The local authority should make a judgement as to the purpose of the disposal of income **only** after balancing all the person's motives, explicit and implicit, and the timing behind the action. The LA should bear in mind, however, that deprivation can be considered for resources disposed of at any time. The six month restriction only applies to using the provisions of section 21 of the Health and Social Services and Social Security Adjudication Act 1983 (**see Annex D**).

Conversion of income to a capital asset

- 8.080 Where, for the purposes of paying a reduced charge or no charge, the right to receive an income resource has been sold, and therefore converted from income to a capital asset, the LA should consider taking account of :
1. the amount of the former income resource **or**
 2. if the newly acquired capital gives rise to a tariff income or an increase in tariff income, the **difference** between the former income resource and the tariff income, or the increase in tariff income, arising from that capital asset.

Examples

1. A resident sold the right to receive an income under an annuity of £10 per week for £2800. Having no other capital the £2800 did not affect the resident's assessment of charges. The LA decided that the resident sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as receiving £10 per week notional income.
2. A resident sold the right to receive income under an annuity of £10 per week for £2800. The resident's other capital was £10,050 and so the total capital of £12,850 produced a tariff income of £4 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing his assessed charge and treated the resident as notionally receiving the £6 difference between the tariff income and the original £10, per week from the annuity.
3. A resident sold the right to receive income under an annuity of £10 per week for £2000. The resident's other capital of £12,200 produced a tariff income of £1 per week. The LA decided that the resident had sold the right to receive the income for the purpose of reducing the assessed charge. An extra tariff income of £8 would have resulted from the sale of the right to receive an income (i.e. £2000 ÷ £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

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

Reg.17(1)

- 8.082 If the resident is unable to pay the charge assessed using the notional income, the LA should consider whether the provisions of section 21 of the Health and Social Services and Social Security Adjudications Act 1983 can be used to transfer the liability for that part of the charges assessed as a result of the notional income to the person to whom the income has been passed (**see Annex D**).

SECTION 9 - EARNINGS

What are earnings?

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 four weeks after the termination or interruption of employment
- any payment by way of a retainer
- any payment made by the person's employer in respect of any expenses **not** wholly, exclusively and necessarily incurred in the performance of the duties of employment. e.g. travelling expenses incurred by the employee between his home and the place of employment. *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 the deduction made by the employer in respect of Class 1 National Insurance contributions
- half of any sum paid to an occupational or personal pension scheme which is:
 - paid by the resident; or
 - deducted from the earnings by the resident's employer

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, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay

- 9.007 The amount of Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay to be taken into account is the gross amount less:

- a) any income tax paid;
- b) any National Insurance employees contributions paid; and
- c) half of any sum paid by the resident as a contribution towards an occupational or personal pension scheme.

Details of these payments should be obtained from the resident in the first instance but, in the event of any queries the LA should ask the employer for clarification.

*Schedule 9 para 4 IS Regs
Schedule 2 para 3 Assessment Resources Regs*

Period over which earnings should be taken into account

Payments for regular periods

- 9.008 Where the earnings are paid at regular intervals the weekly amount should be calculated as follows:
- a. earnings paid for periods of a week or less should be taken into account for one week.
 - b. earnings paid for a calendar month should be multiplied by 12 and divided by 52 to arrive at the weekly amount.
 - c. earnings paid annually should be divided by 52.
 - d. earnings paid at other regular intervals should be multiplied by 7 and divided by the number of days for which the payment is made. *Reg 18(1)(a)*

Payments which are not for fixed periods

- 9.009 Where a resident who works as an employed earner receives payments which cannot be attributed to a set period the payments should be taken into account as follows:

Income Support/Pension Credit in payment

- 9.010 Where a resident, who is getting Income Support/Pension Credit, receives a payment of earnings which is not for a set period the Social Security Adjudication Officer will calculate a number of weeks for which Income Support/Pension Credit will be withdrawn. The LA 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 LA 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 6th 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 LA 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 6th 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 charge and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.
- Reg.18(1)(b)*

Example

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

He receives a payment (**C**) of £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:

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

The resident pays the standard charge of £250 less the £20 disregard for 5 weeks (i.e. he pays £230 which is £110 more than he was paying.

At the end of five weeks he has used up £550 ($5 \times £110$) and has been allowed to keep £100 ($5 \times £20$).

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

Net earnings of self - employed earners

- 9.012 To calculate the amount of net earnings to be considered in the assessment, deduct from the gross earnings any relevant outgoings, liabilities or expenses **such as**
- the amount of income tax the resident pays or is liable to pay
 - the amount of National Insurance the resident is liable to pay
 - half of any sum paid to a personal pension scheme

- stock purchases
- transport costs, wholly related to the business
- stationery
- advertising

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 period is going to result in the fairest assessment of earnings for the resident.
- 9.014 In all other cases, the weekly earnings should generally be calculated by averaging the net earnings over a period of a year. This means that the annual income will be divided by 365 (or 366 in a leap year) and multiplied by seven. 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 is as follows.

Income Support/Pension Credit in payment

- 9.016 Where a resident, who is getting Income Support/Pension Credit, receives a payment of royalties or fees from copyright 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 LA 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 LA should divide the £750 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 6th week the balance of the payment should be taken into account (i.e. $£750 - (5 \times £150) = £50$)

In assessing the charge over these 6 weeks the LA 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 6th week.

Income Support/Pension Credit not in payment

- 9.017 Where Income Support/Pension Credit is not in payment and a resident receives a payment of royalties or fees from copyright which is not for a fixed period, the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard charge and the charge the resident was previously paying (or, if the

resident was not liable to pay any charge, dividing by the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week. *Reg.18(1)(b)*

Example

A resident is paying a charge (**A**) of £120, the standard charge (**B**) is £250
He receives a payment (**C**) of £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:

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

The resident pays the standard charge of £250 less the £20 disregard for 5 weeks (i.e. he pays £230 which is £110 more than he was paying.

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

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

Disregards

9.018 The amount of earnings to be taken into account in the assessment is the net amount calculated in accordance with paragraphs 9.001 to 9.016 above, less the appropriate disregard.

9.019 Disregard £5 of the net weekly earnings unless the resident qualifies for a different disregard under paragraph 9.019 to 9.022 or a discretionary disregard under paragraph 2.009.

Schedule 2 para.4

People entitled to a £20 disregard

9.020 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 60 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 an invalid carriage or other vehicle provided under:

- section 5(2)(a) of the National Health Service Act 1977; or
- in Scotland, under section 46 of the National Health Service (Scotland) Act 1978

or:

(iii) receives a grant under:

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

or:

iv) is registered as blind;

or:

v) has provided medical evidence of incapacity in support of a claim for:

- incapacity benefit; or
- severe disablement allowance;

for a continuous period of not less than 28 weeks.

or:

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

or:

c) is over 60; **and**

satisfied one of conditions in b) above before reaching 60; **and**

has worked continuously since reaching the age of 60

or:

d) is a lone parent.

or:

e) receives Invalid Care Allowance

Schedule 2 para 3

People who have ceased or interrupted employment

9.021 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

9.022 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

9.023 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), the Eileen Trust, the Fund and the Independent Living Fund, the Independent Living (Extension) Fund or the Independent Living (1993) Fund. See paragraph 8.042.

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 as compensation
- proceeds of a separation or divorce settlement
- money set aside by parents to ensure a regular income for a person who is unable to support himself by reason of illness or disability
- a bequest under a will

Trustees

10.003 Trustees may be:

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

10.004 Trustees' powers are governed by:

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

Identifying a Trust

10.005 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 affairs. In these cases a receiver appointed by the Court of 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 a shared interest in a trust, divide the total value equally between the joint beneficiaries and treat the resident as owning an equal share. This method of treatment avoids administrative difficulties. Once the resident is in sole possession of his **actual** share, treat him as owning that actual amount.

10.011 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 his 21st or 25th birthday. In these cases the beneficiary has a contingent interest. Once the contingency is satisfied, the beneficiary becomes absolutely entitled to the capital.

10.013 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 £19,500; or
- b) less than £12,000

it will 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 18th birthday, even where the contingency affecting the capital has not yet been satisfied. The value of the right to receive income is fully disregarded as in paragraph 10.015.
- 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 8.051 to 8.057)
- 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 (paragraphs 8.051 to 8.057)

Compensation for personal injury

Information needed

10.023 Obtain confirmation that the capital held in trust is a lump sum payment of:

- compensation for injury or death (including vaccine damage)
- damages under the Fatal Accidents Act

10.024 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

10.25 Where the capital held in trust is in consequence of personal injury, both the capital and the capital value of any right to receive income are fully disregarded.

Schedule 4 para.10

Treatment of income

10.026 The following periodical payments are disregarded:

- Payments from a trust whose funds are derived from a payment made in consequence of any personal injury.
- Payments under an annuity purchased pursuant to any agreement or court order to make payments, or from funds derived from such a payment, in consequence of any personal injury.
- Payments received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury.

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

The payments in 10.026 are fully disregarded if intended and used to pay for any item which was not taken into account when the standard rate was fixed for the accommodation provided. Otherwise, £20 is disregarded.

Schedule 4 para.10

SECTION 11 - LIABILITY OF RELATIVES

General

11.001 Under Section 42 of the National Assistance Act 1948, 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 the public expense by a local authority, the LA may ask the spouse (i.e. the liable relative or "LR") to refund all or part of that expenditure.

11.002 Unmarried couples are not legally liable to maintain one another even though they live together as husband and wife.

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 LA pursue maintenance and it is paid, the DWP will merely reduce the Income Support/Pension Credit which is in payment so reducing the amount the LA can charge the resident back down to the original amount. Therefore, it is not worth the LA pursuing maintenance where Income Support/Pension Credit is in payment to the resident.

11.003A If DWP 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 these cases involve pensioners, and
- Consider the cost effectiveness of any action to pursue liability

Councils 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 relative's 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 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 for 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 It is important to note that a liable relative making a contribution towards their partner's care may not make a third party top-up from 1 October 2001. Please refer to section 8.018A for further details.

11.004B Council's standard policies on liable relative contributions should be put in writing and discussed clearly with married partners who are being asked for contribution.

11.004C In seeking liable relative contributions from carers, councils 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, LAs may ask a spouse to refund part or all of the authority's expenditure in providing residential accommodation for his/her husband or wife. LAs should note that this does not mean that an authority can demand that a spouse provide details of his/her resources. LAs should not use assessment forms for the resident which require information about the means of the spouse. LAs 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 council can negotiate a liable relative contribution even if the liable relative does not wish to supply details of his or her resources. In the absence of details councils should not charge the partner for any of the care unless negotiation has taken place.

11.006 In practical terms, LAs may wish to proceed as follows:

- i. 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;
- ii. if the resident is unable to pay for his/her accommodation at the standard rate, the LA decides whether it is worth pursuing the spouse for maintenance towards the shortfall;
- iii. 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 resources to Income Support/**Pension Credit** levels in order to pay maintenance;
- iv. ultimately, only the courts can decide what is an "appropriate" amount of maintenance to pay. When negotiating maintenance payments with spouses the LA should therefore consider whether the amount being sought would be similar to that decided by the courts. Councils should consider court action as a last resort.

11.006A The assessment and discussions about a liable relative's contribution should be timely, and should not delay the resident's admission to residential care and immediate funding. If negotiation with the married partner is still continuing on admission of the resident, the council should make contributory payment in the interim. If appropriate, councils should secure retrospective contribution from the married partner.

Liable relative payments

11.007 A liable relative payment (LRP) is:

- most payments made by a person who is liable under the National Assistance Act 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 (LRP)

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

- certain payments made 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 it into account (11.011)
- payments made to the resident in respect of a third party if it is unreasonable to take it into account (11.013)
- any Child Support Maintenance Payment (see 6.028, 8.005 and 8.038)

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 1993. £250 is treated as capital, and £50 treated as an LRP.

His wife gives him £150 for Christmas 1993. The whole amount is treated as an LRP.

On 9 September 1994 his wife gives him £200 for his birthday. The whole amount is treated as an LRP. The 52 week period ends on 11 September 1994.

His wife gives him £200 for Christmas on 15 December 1994. The whole amount is treated as capital and a new 52 week period begins on 15 December. He receives £100 on 15 April 1995. £50 is treated as capital and £50 as an LRP. Any further gifts received during the period 15 December 1994 to 14 December 1995 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 Telecom 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 8.051 to 8.057. *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 (Made by Liable Relatives only)

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) DWP; or
 - iii) the LA.

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 LA 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 a 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 LA 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 LA 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 6th 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 LA 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 6th 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 charge and the charge the resident was previously paying (or, if the resident was not liable to pay any charge, dividing by the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.

Example

A resident is paying a charge (A) of £120, the standard charge (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 charge 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 charge 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 charge 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 charge 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 charge for 3 weeks. This will have used up £420 of the payment (the difference between what he was paying and the standard charge (£140) for 3 weeks).

In the 4th 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 charge 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)*

For 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 charge is £250

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

The resident normally pays a charge of £160

If no 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 in England and Wales by the Local Education Authority (LEA) and in Scotland by the Scottish Education Department (SED), according to the provisions in force at the start of the academic year. In both cases, the grant is likely to include amounts for various specific purposes, such as tuition fees, examination fees, personal maintenance (i.e. the standard maintenance grant), travelling expenses. A student who receives a **discretionary** grant may have that grant assessed on a different basis. Care should be taken in establishing the details of the grant, in particular whether the grant is payable for the period of study since in many cases this will not be the case.

Period over which grant should be taken into account

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

- a. Where the grant is payable for the period of study, the amount to be taken into account should be divided equally over the number of weeks in the period of study.
- b. Where the grant is payable for some other period, the amount to be taken into account should be divided equally over the number of weeks for which the grant has been paid. *Reg.36(2)*

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

Assessed contribution

12.004 The LEA or SED may decide that the student's parent or spouse should make a contribution to the grant. Such a contribution would be assessed on the basis of the income of the parent or spouse and the actual grant payable will be reduced by the amount of assessed contribution. *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 standard maintenance grant is specified in Schedule 2 to the Education (Mandatory Awards) Regulations 1987 and the figure should be obtained from the LEA each year. Any other part of the grant should be ignored. *Reg.36(1)*

12.006 Any assessed contribution from the resident's parents or spouse, 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 into account is equivalent to the amount of standard maintenance grant which would have been paid, had a maintenance grant been payable. Ask the LEA to provide details of the relevant standard maintenance grant in a case such as the resident's.

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 8.051 et seq.)

Reg.38

Student loans

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

Eligibility for student loans

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

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

Maximum student loans

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

Reg.39

12.015 The maximum amount of student loan will depend on

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

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

Calculation of weekly income from student loans

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

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

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

Treatment of payments

12.019 Payments made at regular intervals should be treated as a voluntary payment and be subjected to a £20 disregard. *Reg.40(1)*

12.020 Payments paid, or due to be paid, 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.

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

SOCIAL SECURITY BENEFIT RATES

(Weekly rates unless otherwise shown)

**RATES
2002****RATES
2003****RATES OF PERSONAL EXPENSES ALLOWANCE**

Standard PEA for all supported residents.

16.80

17.50

RATES OF BENEFIT**ATTENDANCE ALLOWANCE**

higher rate

56.25

57.20

lower rate

37.65

38.30

DISABILITY LIVING ALLOWANCE**Care Component**

Highest

56.25

57.20

Middle

37.65

38.30

Lowest

14.90

15.15

Mobility Component

Higher

39.30

39.95

Lower

14.90

15.15

EARNINGS RULES

Therapeutic earnings limit

66.00

67.50

INCAPACITY BENEFIT

Long-term Incapacity Benefit

70.95

72.15

INVALID CARE ALLOWANCE**(CARER'S ALLOWANCE from April 2003)**

42.45

43.15

Short-term Incapacity Benefit (under pension age)

Lower rate

53.50

54.40

Higher rate

63.25

64.35

Short-term Incapacity Benefit (over pension age)

Lower rate

68.05

69.20

Higher rate

70.95

72.15

Increase of Long-term Incapacity Benefit for age

Higher rate

14.90

15.15

Lower rate

7.45

7.60

Invalidity Allowance (Transitional)

Higher rate

14.90

15.15

Middle rate

9.50

9.70

Lower rate

4.75

4.85

**INCOME SUPPORT/MINIMUM INCOME
GUARANTEE**

Personal Allowances

18 to 24	42.70	43.25
25 or over	53.95	54.65

Residential Allowance (Until 6 October 2003)

Except Greater London	64.40	65.50
Greater London	71.65	72.85

Premiums

Pensioner		
Single	44.20	47.45
Couple	65.15	70.05
Pensioner (enhanced)		
Single	44.20	47.45
Couple	65.15	70.05
Pensioner (higher)		
Single	44.20	47.45
Couple	65.15	70.05
Disability		
Single	23.00	23.30
Couple	32.80	33.25

Allowances for personal expenses for claimants in

Private and voluntary residential Care and nursing homes Personal expenses	16.80	£17.50
Local authority (Part 3) accommodation (until 6 October 2003)	75.50	£77.45
Of which, Personal Expenses	16.80	£17.50

Capital

Upper limit	8000.00	8000.00
Amount disregarded	3000.00	3000.00
Child's limit	3000.00	3000.00
Upper limit of RC/NH (until 6 October 2003)	16000.00	16000.00
Amt disregarded of RC/NH	10000.00	10000.00
Upper limit o/60s	12000.00	12000.00
Amount disregarded o/60s	6000.00	6000.00

Deemed income

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

Expenses for subtenants

Furnished or unfurnished	4.00	4.00
Where heating is included, additional	9.40	9.65

PENSION CREDIT (from 6 October 2003)

Standard minimum guarantee	
Single	102.10
Couple	155.80
Additional amount for severe disability	
Single	42.95
Couple (one qualifies)	42.95
Couple (both qualify)	85.90
Additional amount for carers	25.10
Savings Credit threshold	
Single	77.45
Couple	123.80
Capital	
Amount disregarded –care homes	10,000
Deemed income	
£1 for each complete £500 or part thereof in excess of the above amounts	
Housing costs	
Deductions for non dependants	
-aged 18 or over, not in work or in work	7.40
And in receipt of Pension Credit	
-aged 18 or over and in work:	
-gross income: less than £92	7.40
-gross income:£92 to £136.99	17.00
-gross income:£137 to £176.99	23.35
-gross income:£177 to £234.99	38.20
-gross income:£235 to £292.99	43.50
-gross income:£293 and above	47.75
Amount for claimant and first spouse in a polygamous marriage	155.80
Additional amount for additional souse	53.70
Disregards	
Standard earnings	5.00
Couple earnings	10.00
Higher earnings	20.00
War disablement pension and War widows pension	10.00
Widowed Parent's Allowance	10.00
Income from subtenants	20.00
Income from boarders (disregard the fixed £20)	20.00
Plus 50% of the balance of the charge	
Deductions for direct payments arrears of housing, fuel, water costs council tax and fines default	2.75
Arrears of Community Charge court order against claimant	2.75

Court order against couple	4.30
Maximum rates recovery of overpayments	
-ordinary overpayments	8.25
-where claimant convicted of fraud	10.80

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

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

Value of National Savings Certificates

Issue Number	Unit Price	Year of Issue	01/07/98	01/07/99	01/07/00	01/07/01	01/08/02
1 st	15s.6d.	1916-1922	4.61	4.66	4.71	4.76	4.82
2 nd	16s.	1922-1923	4.54	4.59	4.64	4.69	4.74
3 rd	16s.	1923-1932	3.58	3.90	3.95	4.00	4.05
Conversion	16s.	1932	3.58	3.90	3.95	4.00	4.06
4 th	16s.	1932-1933	3.33	3.37	3.41	3.45	3.49
5 th	16s.	1933-1935	3.21	3.25	3.29	3.34	3.38
6 th	15s.	1935-1939	3.17	3.23	3.27	3.33	3.37
7 th	15s.	1939-1947	5.54	5.72	5.72	6.04	6.15
£ issue	£1	1943-1947	5.54	5.72	5.72	6.04	6.15
8 th	10s.	1947-1951	3.56	3.68	3.68	3.88	3.97
9 th	15s.	1951-1956	4.63	4.79	4.79	5.05	5.17
10 th	15s.	1956-1963	3.95	4.09	4.09	4.32	4.40
11 th	£1	1963-1966	5.15	5.32	5.32	5.63	5.73
12 th	£1	1966-1970	4.23	4.38	4.38	4.63	4.74
Decimal £1		1970-1974	3.93	4.06	4.16	4.28	4.36
14 th	£1	1974-1976	3.65	3.77	3.88	3.99	4.06
14 th	£1	1977-1979	3.08	3.18	3.26	3.36	3.45
Index-linked retirement issue	£10	1975-1980	30.15	30.54	31.48	32.12	32.49
16 th	£5	1976-1977	19.08	19.68	20.18	20.78	21.17
18 th	£10	1979-1980	29.13	30.10	30.84	31.77	32.40
19 th	£10	1980-1981	28.55	29.49	30.22	31.14	31.75
Second index-linked issue	£10	1980-1985	20.61	20.88	21.52	21.96	22.22
21 st	£10	1981	25.86	26.71	27.37	28.20	28.76
23 rd	£25	1981-1982	67.47	69.62	71.40	73.54	74.91
24 th	£25	1982	59.75	61.75	63.25	65.16	66.44
25 th	£25	1982-1983	53.62	55.33	56.75	58.47	59.62
26 th	£25	1983-1984	54.12	55.85	57.28	58.99	60.09
27 th	£25	1984	50.48	52.12	53.45	55.07	56.15
28 th	£25	1984	54.66	56.41	57.85	59.58	60.70
29 th	£25	1984-1985	50.99	52.67	53.98	55.61	56.70
3 rd index-linked issue	£25	1985-1986	50.38	51.43	53.22	54.41	55.94
30 th	£25	1985	51.69	53.34	54.70	56.33	57.38
31 st	£25	1986	46.50	48.03	49.22	50.71	51.71
4 th index-linked issue	£25	1966-1990	39.95	40.79	42.20	43.16	44.15
32 nd	£25	1986-1987	47.83	49.35	50.61	52.12	53.10
33 rd re-investment	£25	1987-1988	41.36	42.75	43.79	45.12	46.23
34 th re-investment	£25	1988-1990	39.80	41.07	42.12	43.38	44.19
35 th re-investment		1990-1991	42.54	43.90	45.02	46.36	47.23
5 th index-linked issue							
reinvestment	£25	1990-1992	36.14	36.72	37.81	38.47	39.16

36th

36 th re-investment	£25	1991-1992	38.91	40.19	41.19	42.44	43.28
37 th	£25	1992	37.71	38.95	39.92	41.14	41.95
37 th issue re-investment	£25	1992	37.71	38.95	39.92	41.14	41.95
38 th	£25	1992	36.83	38.01	38.99	40.15	40.91
38 th issue re-investment	£25	1992	36.52	37.75	38.67	39.85	40.83
39 th	£100	1992	141.06	145.71	149.34	153.87	156.89
39 th issue re-investment	£100	1992	141.06	145.71	149.34	153.87	156.89
40 th issue re-investment	£25	1992-1993	31.85	33.54	34.39	35.41	36.08
6 th index-linked issue	£25	1992-1993	31.85	34.01	35.02	35.64	36.28
6 th index-linked re-investment	£25	1992-1993	32.52	34.01	35.02	35.64	36.28
41 st issue re-investment	£25	1993-1994	29.78	31.95	33.17	34.16	34.80
7 th index-linked issue	£25	1993-1994	30.52	32.67	34.12	34.72	35.34
42 nd issue re-investment	£100	1994 - date	110.28	116.70	125.11	133.85	137.14
8 th index-linked issue	£100	1994 - date	112.86	117.95	126.92	133.44	135.83
re-investment	£100	1994 - date	112.86	117.95	126.92	133.44	135.83
43 rd issue re-investment	£100	1996 - date	104.83	109.41	115.20	122.77	130.78
9 th index-linked issue	£100	1996 - date	106.65	109.88	115.64	121.81	129.31
re-investment	£100	1997 - date	106.65	109.88	115.64	121.81	129.31
44 th issue re-investment	£100	1997 - date	100.94	104.83	109.41	115.20	125.10
10 th index-linked issue	£100	1997 - date	100.00	107.51	112.79	118.07	126.78
re-investment	£100	1997 - date	104.55	107.51	112.79	118.07	126.78
11 th index-linked issue	£100	1997 - date	100.00	105.13	109.96	114.61	122.44
re-investment	£100	1998 - date	102.32	105.13	109.96	114.61	122.44
45 th issue re-investment	£100	1998 - date	100.00	104.61	108.91	114.31	121.25
12 th index-linked issue	£100	1998 - date	100.00	104.91	109.55	113.94	120.59
re-investment	£100	1998 - date	102.19	104.91	109.55	113.94	120.59
46 th issue re-investment	£100	1998 - date	100.00	100.00	105.57	109.90	116.65
13 th index-linked issue	£100	1998 - date	100.00	100.00	105.75	109.17	113.85
re-investment	£100	1998 - date	102.19	101.58	105.75	109.17	113.85
47 th issue	£100	1998 - date			105.54	109.63	114.13

re-investment	£100	1998 – date	105.54	109.63	114.13
14 th index-linked issue	£100	1998 – date	105.07	108.36	112.58
48 th issue	£100	1998 – date	104.05	107.51	111.22
re-investment	£100	1998 – date	104.05	107.51	111.22
15 th index-linked issue	£100	1998 – date	105.04	106.44	109.89
49 th issue	£100	1998 – date	103.80	107.04	110.50
re-investment	£100	1999 – date	103.80	107.04	110.50
50 th issue	£100	1999 – date	104.05	106.61	110.23
re-investment	£100	1999 – date	104.05	106.61	110.23
51 st issue	£100	1999 – date	103.30	105.93	110.55
re-investment	£100	1999 – date	103.30	105.93	110.55
52 nd issue	£100	1999 – date	100.00	105.36	110.20
re-investment	£100	1999 – date	102.63	104.36	110.20
53 rd issues	£100	1999 – date	100.00	104.94	110.33
re-investment	£100	1999 – 2000	101.95	104.94	110.33
16 th index-linked issue	£100	2000 – date	100.00	105.16	108.74
re-investment	£100	2000 – date	103.58	105.16	108.74
54 th issue	£100	2000 – date	100.00	104.10	108.47
re-investment	£100	2000 – date	101.03	104.10	108.47
17 th index-linked issue	£100	2000 – date	100.00	100.00	105.05
re-investment	£100	2000 – date	100.00	101.57	105.05
55 th issue	£100	2000 – date	100.00	100.00	105.70
re-investment	£100	2000 – date	100.00	101.85	105.70
18 th index-linked issue	£100	2000 – 2001		100.00	104.47
re-investment	£100	2000 – 2001		101.12	104.47
56 th index	£100	2000 – 2001		100.00	128.22
re-investment	£100	2000 – 2001		100.88	128.22
19 th index-linked issue	£100	2000 – 2001		100.00	103.54
re-investment	£100	2000 – 2001		100.61	103.54
57 th issue	£100	2000 – 2001		100.00	103.25
re-investment	£100	2000 – 2001		100.00	103.25
20 th index-linked issue	£100	2001 – date		100.00	100.00
re-investment	£100	2001 – date		100.63	102.20
58 th issue	£100	2001 – date		100.00	103.40
re-investment	£100	2001 – date		100.00	103.40
59 th issue	£100	2001- date			100.00
re- investment	£100	2001- date			102.63
60 th issue	£100	2001- date			100.00
re-investment	£100	2001- date			102.51
61 st issue	£100	2001- date			100.00
re-investment	£100	2001- date			101.60
62 nd issue	£100	2002- date			100.00
re-investment	£100	2002- date			101.45
63 rd issue	£100	Current			100.00
re- investment	£100	Current			101.55
21 st index-linked issue	£100	2001- date			100.00
Re-investment	£100	2001- date			101.65
22 nd index-linked issue	£100	2002-date			100.00
re-investment	£100	2002-date			102.00
23 rd index-linked issue	£100	Current			100.00
re-investment	£100	Current			102.10

Take the purchase price as the capital value if:

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

A 17th issue was announced but not introduced and a 22nd issue was not introduced.

This table is revised annually. This table is issued at August 2002.

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

General

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

Section 21

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

Deprivation of assets

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

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

Examples

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

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

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

Assets to be considered

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

Transfer of liability

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

For example

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

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

Section 22

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

Placing a charge on land

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

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

Section 24

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

Charging interest

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

Example

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

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

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

TYPE OF RESIDENT	EFFECT ON AA/DLA(Care Component)
Residents in accommodation owned or managed by a local authority or independent sector accommodation where the local authority helps with the fees.	Payable for the first 28 days (if the person was already entitled to AA/DLA (Care) before admission to residential accommodation).
Residents in local authority or independent sector accommodation who do not get help with fees from a local authority even if they are entitled to Income Support, Housing Benefit, income based Jobseekers Allowance or Pension Credit.	Continues to be payable for as long as they meet the conditions of entitlement.
Residents who are receiving a 12-week property disregard, are funded for that period by a local authority, and will become self-funding from the thirteenth week or earlier if the property is sold.	Continues to be payable for the first 28 days and will re-commence from the thirteenth week or when self-funding status re-commences.
Residents in local authority or independent sector accommodation who are temporarily receiving help with the fees while a capital asset is being realised and/or have a Deferred Payments Agreement and where the local authority will be reimbursed their costs. N.B. From 6th October 2003 entitlement to Income Support, Housing Benefit, income based Jobseekers Allowance or Pension Credit will no longer affect a care home resident's entitlement to AA/DLA (Care component).	Continues to be payable for as long as they meet 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 component).

Note:

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

The withdrawal of AA/DLA (Care component) after 28 days will apply to residents who are in a temporary placement such as respite care and this could lead to the removal of the additional amount for severe disability.

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

Income Support/Pension Credit and Retirement Pension: Effect of Admission to Hospital from 21 May 2003¹

Type of Accommodation	Period in Hospital	Income Support/Pension Credit	Retirement Pension
All residents in local authority residential care homes and independent sector residential care and nursing homes.	Immediately on admission	No change to benefit immediately on admission	No change to benefit immediately on admission
	After 52 weeks ^{2/3}	Where benefit is paid in arrears, benefit is reduced to the hospital personal allowance from the first day of the benefit week, which includes the 365 th day in hospital. Where benefit is paid in advance, benefit is reduced to the hospital personal allowance from the first day of the benefit week, which includes, coincides with, or follows the 365 th day in hospital.	Benefit is reduced to 20% of the basic RP rate from the pay-day following 52 weeks of free in-patient treatment.

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 are being introduced with effect from 21 May 2003. This means that residents whose benefit was downrated under the previous rules will have their benefit reinstated from the payday following 21 May 2003 provided that they have not actually been in hospital for 52 weeks.

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

3. Separate periods of free in-patient treatment are treated as one continuous period if they are separated by one or more periods that are each no more than 28 days. The period of free in-patient treatment is calculated by adding together the separate periods of free in-patient treatment.

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

LEGISLATION FOR PAYMENTS OF WAR WIDOWS AND WIDOWERS SPECIAL PAYMENTS

- a) the Naval and Marine Pay and Pensions (Special War Widows and Widowers Payment) Order 1990, made under section 3 of the Naval and Marine Pay and Pensions Act 1865;
- b) the Royal Warrant of 19 February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- c) the Queen's Order dated 26 February 1990 made under section 2 of the Air Force (Constitution) Act 1917;
- d) the Home Guard War Widows and Widowers Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980;
- e) the Orders dated 19 February 1990 amending orders made on 12 December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980.
- f) article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983
- g) article 27(3) of the Personal Injuries (Civilians) Scheme 1983
- h) the dispensing Order in Council of 19th December 1881
- i) the Royal Warrant of 27 October 1884
- j) the dispensing Order by His Majesty of 14 January 1922

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

While local authorities do not have powers to assess a couple according to their joint resources, this is not the case for Income Support/Pension Credit. The treatment of a couple for Income Support/Pension Credit will depend on a number of factors and it may be useful to know how their benefit is assessed. This may give an indication of how much the spouse who remains at home is likely to be able to contribute towards the cost of accommodation.

Temporary Residents

Where the couple are temporarily separated as a result of one being admitted to residential accommodation they will still be treated as a couple for Income Support/Pension Credit purposes, and the whole amount of Income Support/Pension Credit will normally be paid to one partner (generally the partner remaining at home). However, the way that the total amount of Income Support payable to the couple is calculated may differ from the way that the total amount of Pension Credit is calculated.

One member of a married couple temporarily in residential accommodation

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

Where one partner is temporarily in a residential care home, and the couple are entitled to Income Support, the Income Support applicable amount will be the **greater** of:

- the normal applicable amount for the couple as if they were both still at home
- or**
- the normal applicable amount for the partner remaining at home **plus** the applicable amount for the partner in the residential accommodation as if they were a single person.

Both partners temporarily in residential accommodation

Where both partners are in different residential homes or the same residential home Income Support/Pension Credit will be paid in respect of each partner, plus an amount for home commitments where appropriate.

One partner permanently in residential accommodation or both partners in separate residential accommodation

Where one partner moves permanently to residential accommodation Income Support/Pension Credit will be paid as if he were a single person. No account will be taken, in the Income Support/Pension Credit assessment, of the resources of the partner remaining at home although, for those under 60 years, the Jobcentre Plus may look to the partner at home to make a contribution as a liable relative.

Both partners in the same residential accommodation

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

A married or unmarried couple who live in the same household are treated as one unit for Income Support/Pension Credit assessment purposes, and their resources are "aggregated". This means that all the capital and income resources of the couple, whether jointly owned or owned by one partner or the other, are taken into account in one assessment for the couple.

An important factor in deciding whether to treat two residents as a couple for Income Support/Pension Credit purposes is whether they live in the same household. A married couple living in separate homes would not be aggregated because they do not share one household.

If both partners are living in the same residential care or nursing home they may be considered to be living in the same household. However, there may be exceptions, e.g. where one partner lives in a nursing wing and the other in a residential wing, they might be said to live in separate households.

If the Jobcentre Plus/the Pension Service Adjudication Officer has decided to aggregate the couple's resources Income Support/Pension Credit will be paid to one member of the couple taking into account the needs of both members.

**PENSION CREDIT
(for information only)**

Pension Credit will replace Minimum Income Guarantee and will from 6 October 2003 :

- Give a guarantee credit to ensure a standard minimum level of income to those aged 60 and over of £102.10 per week. For couples, the standard minimum guarantee is £155.80 per week. The standard minimum guarantee is increased to an appropriate minimum guarantee for people who qualify as severely disabled or as carers because of receipt of qualifying benefits.
- Give a savings credit which will, from age 65, provide a reward for individuals who have made additional provision for their retirement through second-tier pensions or similar savings. For a single individual the savings credit will rise at 60p in the £ for pre-Pension Credit qualifying income between £77.45, and £102.10. It then falls at 40p in the £ for pre- Pension Credit qualifying income between £102.10 and £139.07. The maximum amount of savings credit an individual can receive is £14.79 per week (when Pre-Pension Credit qualifying income stands at £102.10). The same principles apply to couples, and to individuals and couples who qualify as severely disabled or as carers because of receipt of qualifying benefits, although the levels of qualifying income and the maximum amount of savings credit given above will vary.

For further details about Pension Credit, contact your local Pension Service office.

For further details on the savings disregard please refer to paragraph 8.024 above and to the document *Pension Credit and the Savings Disregard* on www.doh.gov.uk/scg/crag.