

# Health, Social Care and Sport Committee

## 6<sup>th</sup> Meeting, 2023 (Session 6), Tuesday, 21 February 2023

### Subordinate legislation

### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instruments:
  - [The National Assistance \(Assessment of Resources\) Amendment \(Scotland\) Regulations 2023](#)
  - [The National Assistance \(Sums for Personal Requirements\) \(Scotland\) Regulations 2023](#)

#### Procedure for negative instruments

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

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

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

## Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

## Recommendation

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

**Clerks to the Committee**

**16 February 2023**

**SSI 2023/19**

**Title of Instrument:** SSI 2023/19 National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 26 January 2023

**Meeting Date:** 21 February 2023

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** Yes.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [7 February 2023](#), and made no recommendations in relation to this instrument.

**Reporting deadline:** 13 March 2023

## **Purpose**

11. The purpose of the instrument is:

- a. To increase the value of savings credit disregard in line with average earnings which is currently forecast at 5.4%.
  - The National Assistance (Assessment of Resources) Regulations 1992 set out a number of different types of income that are to be disregarded when a local authority assesses a resident's income for the purpose of charging. These Regulations increase the maximum weekly savings credit disregard from £7.30 to £7.70 for single resident and from £10.85 to £11.45 for couples. These increases are in line with the increase in average earnings (5.4%).
- b. To increase the lower capital limit from £18,500 to £20,250 and the upper capital limit from £29,750 to £32,750 in line with CPI forecast at 10.1%.
  - Under section 22 of the National Assistance Act 1948 as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968, local authorities are required to charge residents in residential accommodation an appropriate contribution towards the cost of their residential accommodation.
    - Anyone with capital above the upper capital limit, including property, must meet their remaining accommodation costs (over and above any entitlement to free personal care and nursing care) in full.

- Where the capital falls between upper and lower capital limits the local authority must assist the resident in meeting the cost of the accommodation.
  - Capital under the lower capital limit is not taken into account in assessing a contribution.
- c. To disregard from financial assessments payments to individuals living in residential care from the Windrush Compensation Scheme. This will ensure these payments are not taken into consideration by local authorities when carrying out the financial assessment for determining whether a care resident is able to pay for accommodation.
- These Regulations amend the 1992 Regulations so that payments made under the Scheme are disregarded as part of the financial assessment of a resident's ability to pay for accommodation.
12. The instrument reflects routine annual rises in rates. The instrument is subject to negative procedure and will come into force on 10 April 2023 in line changes to the Department for Work and Pensions benefit and pension rates.
13. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

**SSI 2023/20**

**Title of Instrument:** SSI 2023/20: The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 26 January 2023

**Meeting Date:** 21 February 2023

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

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

**Reporting deadline:** 13 March 2023

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [7 February 2023](#), and made no recommendations in relation to this instrument.

**Reporting deadline:** 13 March 2023

**Purpose**

15. The purpose of the instrument is to increase the value of personal expenses allowance in line with average earnings, an increase of 5.4%.

16. The personal expenses allowance is usually increased each April at the same time as Social Security benefits are updated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes. These regulations will increase the weekly rate of this allowance in line with the increase in average earnings from £31.00 to £32.65 from 10 April 2023.

17. Section 22(4) of the National Assistance Act 1948, as applied by section 87(3) and (4) of the Social Work (Scotland) Act 1968, requires a local authority to assume, in assessing a person's ability to pay for accommodation provided under the 1968 Act or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, that persons will require to retain a sum of money per week to cover the cost of their personal requirements, for example, clothes and toiletries.

18. The instrument reflects routine annual rises in rates. The instrument is subject to negative procedure and will come into force on 10 April 2023 in line changes to the Department for Work and Pensions benefit and pension rates.

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

**POLICY NOTE****THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES) AMENDMENT (SCOTLAND) REGULATIONS 2023****SSI 2023/19**

The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 10 April 2023 in line with changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

To increase the value of savings credit disregard in line with average earnings which is currently forecast at 5.4%.

To increase the lower capital limit from £18,500 to £20,250 and the upper capital limit from £29,750 to £32,750 in line with CPI forecast at 10.1%.

To disregard from financial assessments payments to individuals living in residential care from the Windrush Compensation Scheme. This will ensure these payments are not taken into consideration by local authorities when carrying out the financial assessment for determining whether a care resident is able to pay for accommodation.

**Policy Objectives****Capital Limits**

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

Section 22(5) of the 1948 Act provides that, in assessing a resident’s ability to pay, the local authority shall apply regulations made by the Secretary of State. The applicable regulations are the National Assistance (Assessment of Resources) Regulations 1992 (S.S.I. 1992/2977) (“the 1992 Regulations”). By virtue of section 53(1) of the Scotland Act 1998, the functions of making and amending the 1992 Regulations as regards Scotland are devolved to the Scottish Ministers.

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2022 amended the capital limits so that anyone with capital above the upper capital limit, including property, must meet his or her remaining

accommodation costs (over and above any entitlement to free personal care and nursing care) in full. Where the capital falls between upper and lower capital limits the local authority must assist the resident in meeting the cost of the accommodation. Capital under the lower capital limit is not taken into account in assessing a contribution.

Annual increases to capital limits are increased in line with the Consumer Price Index (CPI), currently estimated to be 10.1%, and rounded to the closest £250. In line with this, the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2023 increases the upper capital limit from £29,750 to £32,750 and increases the lower capital limit from £18,500 to £20,250.

### **Savings Credit Disregard**

The 1992 Regulations set out a number of different types of income that are to be disregarded when a local authority assesses a resident's income for the purpose of charging. Since the introduction of the State Pension Credit Act 2002 this has included a sum where a resident is in receipt of savings credit. These Regulations increase the maximum weekly savings credit disregard from £7.30 to £7.70 for single resident and from £10.85 to £11.45 for couples.

These increases are in line with the increase in average earnings (5.4%).

### **Windrush Compensation Scheme**

The 1992 Regulations set out a number of discretionary payments which are to be disregarded as part of the financial assessment for residential care charges. This is to ensure people retain the full value of these payments in line with the principles of these funds or schemes and their intended outcomes.

The Windrush Compensation Scheme (Expenditure) Act 2020 authorises payment of compensation by the Home Office for certain categories of people who came to the UK many years ago and were entitled to live and work in the UK, but were unable to evidence their right to do so. Many of those individuals have faced difficulties in proving their right to work, to rent property and to access benefits and services to which they are entitled. The UK Government has apologised to people in this position, and in April 2019 established the Windrush Compensation Scheme ("the Scheme"). The Scheme operates to compensate individuals, and in some cases family members, who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom.

These Regulations amend the 1992 Regulations so that payments made under the Scheme are disregarded as part of the financial assessment of a resident's ability to pay for accommodation.

### **Consultation**

Annual rises in the rates referred to above are routine. Additional categories of payment are added to the list of disregarded payments from time to time. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

We have consulted with members of the Charging for Residential Accommodation Guidance (“CRAG”) working group, whose membership consists of local authorities, COSLA officials and other stakeholders, on the decision to disregard payments from the Windrush Compensation Scheme.

### **Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2022/23.

An Equality Impact Assessment has been completed for the decision to disregard payments from the Windrush Compensation Scheme.

### **Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases.

Scottish Government  
Social Care and National Care Service Development Directorate  
January 2023



**POLICY NOTE****THE NATIONAL ASSISTANCE (SUMS FOR PERSONAL REQUIREMENTS)  
(SCOTLAND) REGULATIONS 2023****SSI 2023/20**

The above instrument was made in exercise of the powers conferred by section 22(4) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 10 April 2023 in line changes to the Department for Work and Pensions benefit and pension rates.

**Purpose of the instrument**

To increase the value of personal expenses allowance in line with average earnings, an increase of 5.4%.

**Policy Objectives**

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

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

The National Assistance (Assessment of Resources) Regulations 1992 (S.S.I. 1992/2977), made under section 22(4) of the 1948 Act, prescribe the above mentioned weekly personal expenses allowance. This allowance is usually increased each April at the same time as Social Security benefits are updated. The amount of allowance is the same for individuals whether they are resident in local authority or independent sector homes. These regulations will increase the weekly rate of this allowance in line with the increase in average earnings from £31.00 to £32.65 from 10 April 2023.

**Consultation**

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

**Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2022/23.

**Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases.

Scottish Government  
Social Care and National Care Service Development Directorate  
January 2023