

Business and Regulatory Impact Assessment

National Assistance
(Assessment of Resources)
Regulations 1992

June 2019

BUSINESS AND REGULATORY IMPACT ASSESSMENT

National Assistance (Assessment of Resources) Regulations 1992

1. Title of Proposal

Amendments to the National Assistance (Assessment of Resources) Regulations 1992 in respect of the Advance Payment Scheme.

2. Purpose and intended effect

Background

The Deputy First Minister of Scotland made a statement to Parliament on 23 October 2018 in which he committed to establish a financial redress scheme for survivors of child abuse in care in Scotland. The Advance Payment Scheme comes ahead of planned legislation for a statutory redress scheme, which the Scottish Government intends will pass its final Parliamentary stages before March 2021. It was recommended that advance payments are made as soon as possible to survivors who may not live long enough to apply to the statutory scheme due to either ill health or age. The Advance Payment Scheme therefore opened on 25 April 2019 for those who are aged 70 or over, or who have a terminal illness and are survivors of childhood abuse in care in Scotland before December 2004.

These amendments are necessary to ensure that payments from the Advance Payment Scheme are not taken into account within the personal capital of people subject to financial assessments in respect of residential care. This will ensure that survivors of childhood abuse living in residential care can retain the full value of these payments. To do this, a legislative change is required to The National Assistance (Assessment of Resources) Regulations 1992 Regulations (“1992 Regulations”).

Objective

This is to ensure that payments under the Advance Payment Scheme for historical childhood abuse, will be exempt from social care means tests for those residing in residential care. This will ensure that survivors of childhood abuse living in residential care can retain the full value of these payments.

Given that the scheme is already taking applications, and the intended beneficiaries are older or have a terminal illness, it is intended to make the necessary changes to legislation, as soon as possible. This will be achieved by using the minimum required time for laying of a Scottish Statutory Instrument (SSI), being 28 days as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Rationale for Government Intervention

The Scottish Government wishes to amend these regulations to ensure equal treatment between beneficiaries of the Advance Payment Scheme, such that those recipients in residential care are able to retain the full value of their payments. This contributes to the National Performance Framework outcome to respect, protect and fulfil human rights and enable people to live free from discrimination.

3. Consultation

Within Central Government

The following government departments have been consulted in the preparation of this Business and Regulatory Impact Assessment (BRIA):

- Children and Families Directorate: Redress Policy Team, which is producing the Financial Redress Scheme for survivors of abuse in care and who have provided advice on the production of the Advanced Payment Scheme policy.
- Scottish Government Legal Directorate has provided advice on the legal issues of the current legislation and the proposed amended legislation.

Within Local Government

- Convention of Scottish Local Authorities (COSLA) have been consulted relating to the impact and any consequential circumstances that may come from this proposed change in legislation. This was considered at COSLA's Health and Social Care Board on 24 May.
- We have also consulted members of the Charging for Residential Accommodation Guidance ("CRAG") working group, whose membership consists of local authorities, COSLA officials and other stakeholders.

Public

These proposals are expected to have minimal impact on the general public.

Business

These proposals are expected to have minimal impact on business.

4. Options

Option 1 – Use a specific amendment to disregard this scheme only

1. The 1992 Regulations concern the assessment of the ability of a person to pay for certain accommodation arranged by local authorities. They include details of the capital which is to be disregarded from the assessment of a resident's liability. An amendment could be made to specifically include the disregard of a payment from the Advance Payments Scheme in respect of historical childhood abuse in care. This is the most straight-forward and preferred option.

Option 2 – introduce a wider disregard for personal injury payments

2. DWP have indicated that they would consider these payments as personal injury payments. Both England and Wales have amended the 1992 Regulations, to ensure that personal injury payments are disregarded from assessments. In Scotland under current legislation, such payments are only disregarded if they are paid through a personal injury trust, which is not the case for this scheme. There is therefore an option to introduce a wider disregard of this kind. However, the impact of this is less clear than a specific exclusion as detailed above, and further analysis and necessary discussions would be required to take place between Scottish Government officials and members of COSLA before we could do this. In view of the need to move quickly in order to ensure that older survivors benefit from the Advance Payment Scheme this option has been discounted.

Option 3 – Do nothing

If the National Assistance (Assessment of Resources) Regulations 1992 are not amended, this will mean the Charging in Residential Accommodation Guidance will not incorporate the Advance Payment Scheme for historical childhood abuse in care. This means each local authority would be required to take into consideration any payments made by the Advance Payment Scheme, when considering an individual's financial assessment, toward their care charges when resident in a care home. This would mean that survivors of childhood abuse now living in residential care may not receive the full value of any payments under the scheme. This would be contrary to the Government's objectives and this option has therefore been discounted.

5. Sectors and groups affected

Options	Positive Impact	Negative Impact
Option 1	Payments received from the Advance Payment Scheme will be completely disregarded from local authority financial assessments for charging for residential care	No negative impact is expected.
Option 2	Those in receipt of personal injury payments would have these disregarded in financial assessments for residential care whether or not these are held in trust.	Individuals in receipt of funds from the Advanced Payment Scheme could see this payment being reduced as part of their contribution to the costs of residential care until the required regulatory changes are agreed and introduced. If a wider disregard was introduced, further analysis would be needed to identify any potential impact on income to local authorities from charging.

Option 3	No legislative change would be required.	Individuals in receipt of funds from the Advanced Payment Scheme could see these payments being reduced or completely consumed as part of their contribution to the costs of residential care.
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6. Costs

The amendment to the National Assistance (Assessment of Resources) Regulations 1992 is consequential to the the introduction of the Advance Payment Scheme for historical childhood abuse.

Individual payments have been set at a flat rate of £10,000 and will be ex gratia and discretionary. A nominal budget has been identified for Advance Payments in the Scottish Government's approved 2019/20 Budget. It is not possible to estimate reliably the cost of the Advance Payment Scheme as the scheme will be demand led and will depend on the number of survivors who apply. The Advance Payment scheme will be fully funded by the Scottish Government.

This regulatory impact assessment concerns costs imposed by amendments to the 1992 regulations intended to ensure that survivors of childhood abuse in care who now live in residential care can retain the full value of their payments. This amendment will require local authorities to disregard the value of these payments in their financial assessments for residential care. Given that these payments are new and additional payments there should be no impact on the resources received by local authorities compared to the current position. Local authorities may face some administration costs, however, these should be minimal.

7. Scottish Firms Impact Tests

These proposals are not expected to have any impact on small firms.

8. Competition Assessment

These proposals are not expected to have any impact on competition.

9. Consumer Assessment

These proposals are not expected to have any impact on consumers.

10. Test run of business forms

This policy will not introduce any statutory business forms.

11. Digital Impact Test

These proposals are not expected to have any significant digital impact.

12. Legal Aid Impact Test

These proposals are not expected to have any significant impact on the legal aid budget.

13. Enforcement, sanctions and monitoring

No further enforcement provisions have been made in relation to the discharge of functions by local authorities. There are already general powers of control and enforcement which are conferred on Scottish Ministers in respect of local authorities.

14. Implementation and delivery plan

Subject to Parliamentary approval, our intention is that the amendments to the National Assistance (Assessment of Resources) Regulations 1992 will be brought into effect on 28 June 2019.

15. Summary and Recommendations

In summary, the amendment to the National Assistance (Assessment of Resources) Regulations 1992 will ensure that survivors of childhood abuse living in residential care can retain the full value of these payments which is in line with the spirit of these payments made by the Scottish Government. A wider amendment covering all personal injury payments would be likely to achieve the same objective, however, the outcome is less certain and would take some time to develop and agree with partners. Doing nothing would not achieve our objectives.

In our view, the amendment to the National Assistance (Assessment of Resources) Regulations 1992 does not bring any significant additional costs to Scottish Government, Local Government or individuals.

We therefore intend to proceed with the amendments to the National Assistance (Assessment of Resources) Regulations 1992 as in **Option 1**.

16. Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Date: 21/05/19

**Ms Jeane Freeman
Cabinet Secretary for Health and Sport**



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