

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)**

### **National Assistance (Assessment of Resources) Regulations 1992**

#### **1. Title of Proposal**

Amendments to the National Assistance (Assessment of Resources) Regulations 1992 (“the 1992 Regulations”) in respect of capital payments provided by Future Pathways Discretionary Fund, the forthcoming legislative scheme to provide redress for survivors of historical child abuse in care (“The Statutory Redress Scheme”) and those made by the Thalidomide Trust, to individuals living in residential care.

#### **2. Purpose and intended effect**

##### *Background*

**Future Pathways** is part of Scottish Government’s response to the Scottish Human Rights InterAction Action Plan on Justice for Victims of Historic Abuse.

Future Pathways offers help and support to people who were abused or neglected as children while they were under the care or responsibility of a body, society or organisation in Scotland. It works to help survivors access person-centred support that will help them to lead full, healthy and independent lives and find their own pathways to a positive future.

Using a personal outcomes approach, Future Pathways has been able to help survivors access a wide range of support including education or training courses, physical exercise groups, therapeutic services and access to records, all in line with an individual’s personal outcomes.

Future Pathways awards grants by way of lump sum payments and there are no plans to make periodical payments in the future. Accordingly, the proposed disregard is only being applied to capital paid to individuals from the fund.

The **Statutory Redress Scheme** for historical child abuse when under the care or responsibility of a body, society or organisation in Scotland, has been consulted upon and the Programme for Government commits that the necessary legislation is to be introduced in the Scottish Parliament during the current Parliamentary year.

The Statutory Redress Scheme is intended to provide acknowledgement and tangible recognition of the harm that was done to children in the past who were abused in care in Scotland, acknowledging at the same time that such recognition cannot in any way take away the pain that individuals have suffered.

In advance of the Statutory Redress Scheme being operational, the Scottish Ministers set up an Advance Payment Scheme which opened for applications in April 2019. This Scheme applies to those who have a terminal illness or who are age 68 or over (age reduced from 70 in December 2019). A previous amendment to these

regulations was introduced in June 2019 to disregard payments from the Advance Payment Scheme.<sup>1</sup>

The **Thalidomide Trust** is responsible for administering two funds – the annual compensation payments funded by Diageo and the Health Grants funded by the four UK Departments with responsibility for health and social care. The Thalidomide Trust has a ten year grant agreement in place with the four UK departments which covers the period through to April 2022.

The Social Security (Infected Blood and Thalidomide) Regulations 2017 amended the Income Support Regulations to provide that payments of capital gained from the Thalidomide Trust are disregarded. This amendment, however, did not automatically cross over to the social care charging regulations.

To address this, changes were subsequently made to regulations so that payments of capital from the Thalidomide Trust are disregarded in local authorities' social care financial assessments in England. This met the policy intention and ensured consistency in the approach to the treatment of charitable payments of both capital and income across the benefits and social care systems to ensure that they are disregarded.

Following discussion with The Thalidomide Trust we agreed to seek to amend the regulations for charging for residential care and have worked with COSLA to agree a similar approach is adopted in Scotland for people receiving support at home.

#### *Objective*

This is to ensure that capital payments provided by Future Pathways Discretionary Fund, the Statutory Redress Scheme and the Thalidomide Trust will be exempt from social care means tests for those residing in residential care. This will ensure that grant recipients in residential care retain the full value of these payments in line with the principles of these funds.

#### *Rationale for Government Intervention*

The Scottish Government wishes to amend these regulations to ensure equal treatment between beneficiaries of the Future Pathways Discretionary Fund, the Statutory Redress Scheme and payments from the Thalidomide Trust by enabling those living in residential care to retain the full value of any 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):

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<sup>1</sup> S.S.I 2019/191

- Scottish Government Legal Directorate has provided advice on the legal issues of the current legislation and the proposed amended legislation.
- Social Security have been consulted on the impact of redress payments on benefit and tax entitlement.
- Integration Directorate have advised on links with the Thalidomide Trust.

#### *Within Local Government*

- The Charging for Residential Accommodation Guidance (“CRAG”) working group, whose membership consists of local authorities, COSLA officials and other stakeholder was consulted.
- COSLA produce national guidance for charging for non-residential care which local authorities use to guide the development of their own local charging policies. We consulted members of the COSLA Non-Residential Charging Working Group which endorsed the principle of disregarding these payments.
- COSLA’s Health and Social Care Board has considered proposals to amend COSLA’s guidance to recommend disregards for payments from these schemes in care at home. The Board has been informed of Scottish Government’s plans in respect of charges for residential care.

#### *Public*

- The Thalidomide Trust is a registered charity, supporting people who are living with disabilities as a result of their mothers taking the drug Thalidomide during the first three months of pregnancy. The Trust approached us, on behalf of their beneficiaries, to request these changes.

#### *Business*

These proposals are expected to have minimal if any impact on business.

## **4. Options**

### *Option 1 – Use a specific amendment to disregard payments under these schemes*

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 income and capital which is to be disregarded from the assessment of a resident’s liability. An amendment could be made to specifically disregard capital payments from the Future Pathways Discretionary Fund, the Statutory Redress Scheme and the Thalidomide Trust. This is the most straight-forward and preferred option.

### *Option 2 – Do nothing*

2. If the 1992 Regulations are not amended, this will mean the Charging in Residential Accommodation Guidance will not incorporate disregards for payments made by Future Pathways Discretionary Fund, the Statutory Redress Scheme or the Thalidomide Trust. This means each local authority would be required to take into consideration any payments made from these funds when considering an individual’s

financial assessment, toward their care charges when resident in a care home. This would mean those in receipt of these payments, if living in residential care, may not receive the full value of these payments. This would be contrary to the Scottish Government's objectives.

## 5. Sectors and groups affected

| Options  | Positive Impact  | Negative Impact   |
|----------|--|---|
| Option 1 | Payments from the Future Pathways Discretionary Fund, the forthcoming Statutory Redress Scheme and those from the Thalidomide Trust, will be disregarded from local authority financial assessments for charging for residential care. This will enable recipients to retain the full value of any payments. | No negative impact is expected.   |
| Option 2 | No legislative change would be required.   | Individuals in receipt of funds from Future Pathways Discretionary Fund, the forthcoming Statutory Redress Scheme and from the Thalidomide Trust, could see these payments reduced or completely consumed as part of their contribution to the costs of residential care. |

## 6. Costs

### Future Pathways Discretionary Fund

The amendment to the 1992 Regulations is consequential to the introduction of Future Pathways Discretionary Fund.

In the financial year 2018/19 the total value of awards through the fund was £1,381,669 with 406 people receiving support. This can be further broken down as follows:

- 133 people have received support summing to less than £1,000;
- 125 people have received support summing to more than £1,000 and less than £3,000;
- 61 people have received support summing to more than £3,000 and less than £5,000;
- 60 people have received support summing to more than £5,000 and less than £10,000;
- 27 people have received support summing to more than £10,000.

The support provided was for the following range of goods and services:

- Vehicles on average costing £7,908 (guidance established identifies £8,000 as a guide limit for vehicles, however discretion is still available);

- Laptops/computers, on average costing £350 and ranging from £327 to £1556;
- Furniture;
- Support for gym membership and other physical welling activities;
- Wellbeing/Complementary therapies; and
- Driving Lessons.

Since Future Pathways Discretionary Fund was introduced in the financial year 2016/17 the average spend per person has been relatively consistent at £3,000 - £3,400 per annum. In 2018/19 there were six individuals who received more than £20,000.

Future Pathways are not aware of any previous recipients of the Discretionary Fund living in residential care. Our understanding is that given this context, additional costs imposed on local authorities by disregarding these payments from social care means tests are expected to be minimal and would not constitute a new burden on local authorities.

### **Statutory Redress Scheme**

Child abuse has long been surrounded by secrecy, shame and taboo and it is only very recently that its prevalence and devastating impact has begun to come to light and be understood. Although awareness and action is growing on this issue, there are still a number of challenges involved in estimating the financial implications of the Statutory Redress Scheme. This includes a lack of data on the number of child abuse survivors alive in Scotland today.

The potential numbers of care-experienced people who are survivors of abuse in care in Scotland and are still alive today are estimated at 24,000-76,000. The number who may come forward for financial redress is an unknown proportion of this estimate.

The projected cost of the Statutory Redress Scheme is extremely wide ranging: between £200 million to around £1 billion. This range was modelled on the estimate of 24,000-76,000 potential applicants, and a low estimate of an average payment of £30,000 and a high estimate of an average payment of £40,000. We have commissioned updated financial modelling from the Government Actuarial Department.

In respect of the proposed amendments covered by this impact assessment, given that the Statutory Redress Scheme has not yet been introduced, any loss of potential income from payments disregarded from assessments for residential care will not be a new burden on local authorities. Payments under the Advanced Payment Scheme, which precedes the statutory scheme, are already disregarded.

### **Thalidomide Trust**

The amendment to the 1992 Regulations is consequential to the introduction of disregards for payments and capital paid to those who receive payments from the Thalidomide Trust.

Scottish Government provide £1.4 million per annum to the Thalidomide Trust who in addition receive £1.8 million from Diageo in Scotland, to provide annual payments to individuals. Information from the Thalidomide Trust shows that there are 52 recipients of these payments in Scotland. Of these, two are in residential care; 6 receive paid for care and support at home; 13 receive informal care from family and friends without public support. 17 do not currently receive any care. The position of the remaining 14 recipients is not known at this stage.

The UK Government concluded that no additional costs to local authorities in England were expected to be incurred by moves to disregard capital payments from the Trust from social care means tests. This is because these payments were previously spent in year, and so disregarded as income, or not drawn down from the Trust.

Our understanding is that the position is likely to be similar in Scotland. Given this context, and the small numbers of people involved, additional costs imposed on local authorities by disregarding these payments from social care means tests are expected to be minimal, if any.

#### **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 1992 Regulations will be brought into effect on 6 April 2020.

#### **15. Summary and Recommendations**

In summary, the proposed amendment to the 1992 Regulations will ensure that people living in residential care can retain the full value of any payments made to them by the Future Pathways Discretionary Fund, the Statutory Redress Scheme and from the Thalidomide Trust which is in line with the policy intention of these payments.

We are of the view, that the amendment to the 1992 Regulations does not bring any significant additional costs to Scottish Government, Local Government or individuals.

We therefore intend to proceed with the amendments to the 1992 Regulations 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.

**Signed: Jeane Freeman**

**Date: 18 February 2020**

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