

PE1729/A

Scottish Government submission of 22 October 2019

The National Assistance (Assessment of Resources) Regulations 1992 (“1992 Regulations”) and associated Charging for Residential Accommodation Guidance (“CRAG”), provide the framework for local authorities to charge for the residential care that they provide or arrange.

The 1992 Regulations and Crofting legislation are two independent legislative regimes. It is for local authorities to interpret the 1992 Regulations in applying their policies. If there are any disagreements in following CRAG guidance, the next step is for the matter to be raised in a Scottish Court of Law.

A financial assessment is carried out by the local authority and is dependent on an person’s income and capital assets. There are examples of capital shown in the CRAG however, this list is not exhaustive. If a local authority interprets the guidance that a owner-occupied croft house or a croft tenancy constitutes as a capital asset, it can also consider whether it permits the owner-occupied croft house or a croft tenancy to be deferred or disregarded under the 1992 Regulations. Schedule 4 of the 1992 Regulations contains details on capital that is to be disregarded in the Local Authority’s assessment, in which crofts are not mentioned.

Below is a table of local authorities that have crofts in their areas. Western Isles Council have contacted these areas and confirmed with these areas the process that is followed.

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|---------------------------|---|
| Argyll & Bute | House and croft taken into account |
| Comhairle nan Eilean Siar | House and croft taken into account |
| Highland | House and croft taken into account |
| Moray | Don’t have crofts but if they did they would take into account. |
| Orkney | House and croft taken into account |
| Shetland | House and croft taken into account |

Crofting is an important part of Scotland’s heritage and has unique land tenure characteristics. In terms of ownership of property (e.g. land or an owner-occupied croft) a title is held, and a croft tenancy bestows rights to assign it to another. In any event, disposing of both a property or a croft tenancy can involve transfer of tenancy and/or ownership rights and privileges in exchange for payment and do take place by means of sale.

Accordingly, croft houses, owner-occupied crofts and croft tenancies are treated as assets. The sale of these assets are conducted on a regular basis on the open market and this is evidenced by adverts that appear on the internet and elsewhere, and through various outlets within the crofting counties.

The Scottish Government has recently engaged with crofting stakeholders involved in the Crofting Bill Group, which was tasked with identifying changes that were required to crofting law. The Group is made up of representatives from NFUS, SCF,

Crofting Commission, HIE, COSLA, Scottish Land and Estates, SAC, SNH, and Scottish Land Court, together with solicitors and crofters. There was a consensus among the members of the Group that there was a need to establish the legal wherewithal to introduce a standard security provision for croft tenancies. Any such provision would rely upon a croft tenancy being treated as an asset.

The sale of a croft tenancy, for whatever reason, does not adversely impact upon the system of crofting. Indeed such transactions occur routinely. An important point to note here is that land remains in crofting tenure and the buyer (assignee - the new crofter to whom the croft has been assigned) is required to comply with the statutory duties.

When a crofter applies to the Crofting Commission (Commission) for consent to assign the croft tenancy there are a number of factors that the Commission must have regard to. In terms of s58A(7) of the Crofters (Scotland) Act 1993, as amended, the Commission is obliged to consider:

- whether any new tenant will be ordinarily resident on, or within 32 kilometres of, the croft;
- whether the croft will be cultivated or put to another purposeful use;
- the interest of the estate;
- the interests of the relevant crofting community;
- the sustainable development of that crofting community;
- the interests of the public at large;
- any objections received;
- the Crofting Commission Policy Plan; and
- any other matter the Crofting Commission considers relevant.

These considerations are designed to support the sustainability of crofting in all its communities.

Lastly, if crofting was exempt from the capital classification it would be very difficult to explain and justify why croft properties, owner-occupied crofts and croft tenancies – which are capital assets - would be treated differently from the capital assets of land and buildings of that of non-crofters.