

## **PE1729/E**

Scottish Government submission of 26 March 2020

The National Assistance Act 1948 (“1948 Act”), 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 commission. The guidance specifies treatment of property, providing local authorities with the discretion over whether to take the value of property and/or land into account.

As was noted in the submission in October, a croft can be transferred by assignation (if a tenancy) or sale (if owner-occupied). In regard to the process for Assignation, we would direct all relevant Councils to the Crofters (Scotland) Act 1993 (as amended), and to the Crofting Commission’s website for guidance on Assignation which sets out the procedure and the individuals to whom a croft may be transferred.

In regard to future legislation, the Scottish Government previously engaged with crofting stakeholders involved in the Crofting Bill Group, which was tasked with identifying changes that were required to crofting law. However, the Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, made a statement to the Scottish Parliament on 10 September 2019, explaining that a Crofting Bill was not part of the Programme for Government 2019-20 as a result of Brexit pressures and other Government legislative priorities, and regrettably work on crofting legislative reform has had to be suspended.

However, as part of the Bill Group’s deliberations, 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 stakeholder Bill Group did not flag up the issue of a croft being an asset as requiring legal attention.

There is potential to review the resourcing decision on legislative reform work in future. Issues for consideration in future legislative reform work may be raised via the Crofting Stakeholder Forum.

In the meantime, the examples of capital listed in the CRAG are not exhaustive and are therefore open to consideration by local authorities. This is to allow for local flexibility in line with the priorities and circumstances of local communities. The updated CRAG for 2020/21 which will be published on 1 April 2020 will continue to contain this flexibility.

If at any point in the future, legislation and corresponding policy changes are made, the CRAG can be updated to reflect this. In the meantime, the CRAG, along with the 1948 Act and the 1992 Regulations form the framework for local authorities to charge for the residential care that they provide or commission. It is for local authorities to interpret the 1992 Regulations in applying their policies.

Until such time as there are any legislative changes that result in changes being made to the CRAG, 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.