

## Briefing for the Public Petitions Committee

**Petition Number:** [PE1729](#)

**Subject:** Legal protection of crofts from local authority care charges

**Main Petitioner:** John Maciver

Calls on the Scottish Parliament to urge the Scottish Government to ensure crofting tenancies are exempt from local authority Financial Assessments for care charges.

### Background

Under the National Assistance (Assessment of Resources) Regulations 1992, local authorities may charge for the care they provide or arrange in residential care homes. The Scottish Government has produced [guidance](#) (most recently updated in July 2019) to help local authorities interpret and implement these regulations. This Charging for Residential Accommodation Guidance is sometimes referred to as CRAG. The guidance gives a list of what it considers to be capital assets. Land and property are included, but crofts are not explicitly mentioned.

In this case the petitioner is referencing a case whereby his family has been in dispute with Comhairle nan Eilean Siar as to whether a croft and croft property should be considered as “capital assets” with regard to the legislation and guidance. In the case of this family, the petitioner references that it was Comhairle nan Eilean Siar’s Advocate opinion that “a croft and a croft house were ‘likely’ to be classed as capital and therefore required to be taken into account for the financial assessment of residents in respect of care charges”.

The [minutes](#) of the Scottish Parliament Cross Party Group on Crofting from 31 October 2012 set out key points delivered by a Scottish Government official at that meeting in relation to this issue. These points are reproduced below:

- *“The Social Work (Scotland) Act 1968 prescribes the statutory obligation upon councils to assess the needs of people and determine the level of care. It is the responsibility of the local authority to establish the funding method and efficient use of services based on the needs assessment.*
- *Local authorities conduct a financial assessment after determining the provision of care required. At this stage local authorities refer to the Charging for Residential Accommodation Guidance and regulations to*

*consider the circumstances of an individual for paying for their care needs.*

- *Crofts and croft tenancies are assets, in the same way as family homes are assets. The sales of each of these are conducted on a regular basis through outlets within the crofting counties.*
- *It is the local authorities' responsibility to interpret the guidance and regulations applying the exemptions of capital disregard according to the circumstances of the individual and their property. It is for local authorities to decide whether the croft house and garden or the whole croft property should be considered within the scope of charging regulations. Disputes that may arise on the interpretation of guidance and regulations is a matter to be resolved by the courts.*
- *We plan to update the Charging for Residential Accommodation Guidance to take cognisance of the Westminster-led welfare reform changes and will take this opportunity to provide an example of the treatment of a croft to provide clarity to local authorities and encourage consistency of approach”.*

As indicated above, the most recent guidance does not explicitly reference crofting. The Scottish Government position on the matter is “It is for local authorities to interpret the Regulations in applying their policies. If there are any disagreements following Charging for Residential Accommodation Guidance, the next step is for the matter to be raised in a Scottish Court of Law”<sup>1</sup>.

### **Scottish Government Action**

The Scottish Government has updated the relevant guidance from time to time, most recently in July 2019. There are no current plans to change the Charging for Residential Accommodation Guidance to specifically add crofting.

### **Scottish Parliament Action**

This specific issue, in relation to crofts, does not appear to have been raised in formal parliamentary business.

**Graeme Cook**  
**Head of Research and Knowledge Exchange**  
06/09/2019

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<sup>1</sup> Personal communication between SPICe and Scottish Government

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