

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 1 – Community Care

Accommodation

Section 3 - Disregarding of resources when determining whether to make available assistance by providing residential accommodation

18. Currently, local authorities must disregard £18,500 of a person's capital when determining whether to provide (directly or by making arrangements with another provider) a care home place for that person. This is the effect of section 12(3A) and (3B) of the 1968 Act, which requires authorities to disregard capital equal to or below the capital limit of the residential care means test, currently £18,500. (These limits are set in the National Assistance (Assessment of Resources) Regulations 1992, as amended for Scotland). Thus local authorities are precluded from deciding not to provide residential accommodation to someone simply because he or she has a certain level of capital, if that is below £18,500. The effect of this is that where someone has capital over £18,500, a local authority may refuse to provide accommodation for him or her. (The implication is that the capital exceeding £18,500 could be used to meet care costs.)
19. *Section 3* of the Act replaces section 12(3A) and (3B) of the 1968 Act with new provisions which enable the Scottish Ministers to specify by order what resources of a person, and how much of those resources, should be disregarded when deciding whether to provide residential accommodation. The provision breaks the link with the capital limit and an order can make provisions that apply differently for different cases.
20. The power is wide and is needed as a consequence of the Act's provisions on free nursing and personal care and deferred payment agreements. Regulations under section 12 of the 1968 Act (as amended by this Act) will be needed to remove any question about local authorities' discretion to decide not to provide or arrange accommodation, for example, because of the capital value of the homes of people who are to be eligible for free care or deferred payments.