

# COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

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## EXPLANATORY NOTES

### Part 1 – Community Care

#### Accommodation

##### *Section 6 - Deferred payment of accommodation costs*

30. The effect of this section is to make it possible for a person already in or going into a care home to defer selling their home in order to pay for their care. In effect, where a deferred payment agreement is in place, the local authority will meet all or part of the resident's contribution to his or her care home fees. The authority will ultimately recover the money, either from the estate when the resident dies or from the resident if he or she decides to make a full repayment during his or her lifetime.
31. Subsection (1) gives local authorities the power, in accordance with regulations made by the Scottish Ministers, to enter into deferred payment agreements and it enables Ministers to require local authorities to enter into such agreements. Such an agreement may be made with someone for whom a local authority is already providing or securing the provision of residential accommodation under the 1968 Act or section 7 of the 1984 Act, or is proposing to do so, in circumstances where the person would be liable to make a financial contribution towards the cost. The power applies whether the financial contribution would be towards the cost which the local authority would usually expect to pay, or whether it would be a top up payment by the person by virtue of section 4 of the Act. A deferred payment agreement will have to comply with the provisions of the regulations, which may apply differently to top-up and normal payments.
32. Subsection (2) sets out the nature of the deferred payment arrangement. In essence it is an agreement whereby during a certain period of time a resident will not be required to make all or a portion of the payments that he or she would otherwise have to make under the means testing regime and/or an agreed top-up. Instead, the resident will grant the authority a standard security over his or her property.
33. Under the agreement, payments will be deferred from the date on which the agreement takes effect until the expiry of 56 days after the date of death of the person or the earlier date of termination of the agreement by the person. Interest will not become due on the amount secured until that amount becomes payable and is then due at such rate as the authority may determine in accordance with directions by the Scottish Ministers. A deferred payment agreement is competent only where the person grants a standard security in favour of the authority securing the authority's estimate of the total amount of the payments deferred and the amount of interest likely to be due from the date the payments become due. In essence, therefore, the person must have property of a value sufficient to secure the portion to be deferred of the amount that he or she would otherwise be liable to pay for his or her residential care during his or her lifetime.

*These notes relate to the Community Care and Health (Scotland)  
Act 2002 (asp 5) which received Royal Assent on 12 March 2002*

34. Subsection (3) allows for the portion of the payment to be deferred to be specified in regulations. For example, the regulations may ensure that the agreement defers payment by a person of that part of his or her contribution which would come from the capital value of his or her home.