

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 1 – Community Care

Accommodation

Section 5 - Local authority arrangements for residential accommodation outwith Scotland

23. Currently, Scottish local authorities have no power themselves to arrange for residential accommodation with nursing anywhere other than in Scotland. It has been accepted practice that there is no similar restriction on arranging for residential accommodation without nursing but the legislation does not provide a clear power to arrange such placements outside Scotland.
24. Subsection (1) of section 5 enables the Scottish Ministers to permit or require, as appropriate, local authorities to make such arrangements for residential accommodation, both with and without nursing. These arrangements would be made in fulfilment of the local authority's duties under sections 12(1) and 13A(1) of the 1968 Act.
25. Subsection (2) enables the Scottish Ministers by regulations to modify the way in which any of the provisions of the 1968 Act would apply to a placement under this section. An example of the type of modification would be section 12A(3) of the 1968 Act. Under section 12A(3), a local authority notifies and liaises with a Health Authority in the place where accommodation is proposed to be provided, where it appears to the local authority that there might be a need for the provision of health services there to the person. Modification would be needed for the purposes of a placement under this section, to refer to the appropriate equivalent health body in the other parts of the UK.
26. Subsection (3) recognises that arrangements have already been made for residential accommodation outside Scotland, on the understanding that this was possible under section 12(1) of the 1968 Act. It makes sure that any such existing arrangements are on a sound legislative footing by bringing them under section 5.
27. For placements made under this section, subsection (4) removes the requirement under section 13A(2) of the 1968 Act for residential accommodation with nursing to be in care homes registered under Scottish legislation. Subsection (4) also removes the requirements of section 13A(3) of the 1968 Act from premises where someone is to be placed under this section. This serves to clarify that the inspection provisions of section 6 of the 1968 Act do not apply. The accommodation will not be in Scotland and inspection arrangements will be secured through the appropriate regime in the place where it is situated.
28. The accommodation which may be arranged in Scotland under sections 12 and 13A of the 1968 Act must meet certain requirements and, in the case of section 13A(1),

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

must be of a certain type. Section 5(5) of the Act, read with section 5(6), defines what is an “appropriate establishment” in which residential accommodation outside Scotland may be arranged. Paragraph (a) specifies the equivalent for England and Wales of residential accommodation without nursing and allows for such establishments in Northern Ireland, the Channel Islands and the Isle of Man to be specified in regulations under subsection (1). Paragraph (b) provides similar definitions for residential accommodation with nursing.

29. The same type of restrictions therefore apply for placements in England and Wales, and the Scottish Ministers, by regulations, are able to secure such restrictions where appropriate as regards Northern Ireland, any of the Channel Islands or the Isle of Man.