

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 : Social Care

Measures to increase availability of Part 3 accommodation

Section 53: Disregarding of resources when determining need for residential accommodation

258. Currently local authorities can only support people in residential accommodation who are in need of care and attention which is ‘*not otherwise available to them*’. Local authorities may refuse to support a person who has capital in excess of £18,500, (the current amount of money councils are not allowed to take into account when carrying out a means test) and the capacity to make their own arrangements on the grounds that they have care and attention otherwise available to them (the implication is that the £18,500+ capital could be used to meet care costs).
259. *Section 53* enables the Secretary of State to specify in regulations certain capital that is to be ignored by local authorities in determining whether care and attention is ‘*otherwise available*’.
260. This section will allow regulations to be made in the future which break the link with the capital limit when determining whether care and attention is “otherwise available”, so that more people are able to take up the offer of a charge against their home to pay for their accommodation. Charges against homes are dealt with in *section 55*.

Section 54: Funding by resident etc. of more expensive accommodation

261. Currently, people provided with accommodation by local authorities cannot themselves pay the extra required for them to be provided with more expensive accommodation than the local authority will pay for. In other words, people cannot use any assets ignored by the means test to fund a care placement whose cost is greater than the level the local council would usually pay. This is because they will have been assessed for a fair contribution so should not have extra resources to utilise in this way. A third party (for example, a relative) can make up the difference if a more expensive home is chosen.
262. Under the new arrangements – the three month disregard (whereby for the first three months from admission to residential care, the value of the resident’s home is disregarded from the means test) and the deferred payments scheme (see *section 55*) – greater numbers of people will be effectively supported by the local authority and many of these people will have some additional resources available .
263. *Section 54* allows for the making of regulations to enable both residents and third parties to make additional payments so that a resident can enter more expensive accommodation than that which the authority would normally pay for in respect of a person with the same needs. *Subsection (2)* defines additional payments.

Section 55: Power for local authorities to take charges on land instead of contributions

264. The effect of this section is to make it possible for people going into care to defer selling their homes in order to pay for their care. In effect the local authority will make a loan to the resident and recover the money either from the estate when the resident dies or from the resident if he decides to make a full repayment during his lifetime.
265. *Subsection (1)* enables local authorities to enter into deferred payments agreements. *Subsection (2)* allows directions to be made setting out the circumstances in which an authority must enter into these arrangements. *Subsection (3)* sets out the nature of the deferred payment arrangement. In essence it is an agreement whereby during a certain period of time (the exempt period) a resident will not be required to make the payments, or the whole of the payments, he would otherwise have to make under the means testing regime. Instead the resident will grant the authority a charge over land in respect of such payments. *Subsection (4)* defines the exempt period. *Subsection (5)* allows the local authority to determine the provisions of the arrangement subject to any directions given by the Secretary of State or the National Assembly for Wales and provides that the arrangement must allow the resident to terminate the agreement at any time by giving notice and paying the full amount owing .
266. *Subsection (6)* provides that interest is not to be charged during the exempt period but that a local authority may charge interest after that period at a reasonable rate set out in directions given by the Secretary of State or the National Assembly for Wales or, if no such directions are given, at such a rate determined by the local authority .
267. *Subsection (7)* enables regulations to define how much of a resident's contributions in respect of his accommodation is to be subject to a deferred payment agreement. It also ensures that additional payments under section 54 (that is, payments to cover the cost of more expensive accommodation) are regarded as contributions in respect of his accommodation for the purposes of this section.
268. *Subsection (8)* provides that any directions given under the Section are to be given to local authorities generally.

Section 56: Cross-Border Placements

269. The existing legislation does not allow local authorities in England and Wales to make and pay for residential care placements in Scotland, Northern Ireland, the Channel Islands or the Isle of Man. This section will enable regulations to be made to allow this. It is intended to allow people needing residential care to have care closer to their families, for example, where their families have moved away.
270. *Subsection (1)* allows regulations to be made authorising local authorities to make arrangements for a person to be provided with residential accommodation in Scotland, Northern Ireland, the Channel Islands or the Isle of Man.
271. *Subsection (2)* provides that the regulations may, in particular, make provision specifying conditions to be satisfied before a local authority may make such arrangements, and may make provision applying the provisions of the 1948 Act with or without modifications.