Investment bonds and long-term care assessments (excluding England)

Briefing Note

The obligation to provide residential accommodation 'for persons who by reason of age, illness, disability and other circumstances, are in need of care and attention which is not otherwise available to them' is placed on local authorities under section 21 of the National Assistance Act 1948. There is also additional legislation that has been passed in constituent countries of the UK.

However, where a person is provided with accommodation, section 22 of that Act provides for them to be charged for the accommodation. If they are unable to pay the standard rate, the local authority must assess their ability to pay, and decide what lower amount should be charged.

The provision of the care is means-tested and the local authority provides a contribution, based on the means testing, towards the cost of residential care.

An individual is allowed to retain a certain amount of capital, but above this they are expected to contribute to their accommodation costs. The relevant capital limits for 2020/21 are as follows:

	Wales	Scotland	Northern Ireland
Upper limit	£50,000**	£28,500	£23,250
Lower limit	Not applicable*	£18,000	£14,250

* The lower capital limit in Wales was abolished on 12 April 2010 and the effect of this was to produce a single capital limit.

** £24,000 if care at home

Where the person concerned is one of a couple, the limit relates to capital in their own name plus their share of jointly owned capital.

This means that no assistance with costs would be provided where capital is more than the upper limit and reduced assistance will be provided where capital is between the upper and lower capital limits (but this does not apply in Wales).

The capital that is taken into account includes cash, bank and building society accounts, National Savings Certificates and accounts, premium bonds, stocks and shares, unit trusts, and assets held abroad.

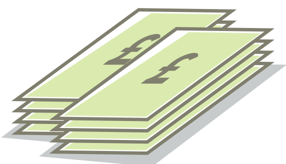
Whether an individual's own home is included depends on the stay in the care home being permanent (and not temporary) and there not being someone still living in the property who is their partner or an appropriate relative.

Investment bonds

One asset that is not included in the list of capital is life assurance policies. And investment bonds are specifically excluded, although capital redemption bonds are included because they do not include any element of life assurance.

The exclusion is contained in guidelines for Scotland and Northern Ireland on how local authorities should assess people for long-term care costs – the Charging for Residential Accommodation Guidance (CRAG).

Please be aware that there are separate CRAGs (under the same name) issued by the Health and Social Care Integration Directorate (Scotland) and the Department of Health, Social Services and Public Safety (Northern Ireland). In Wales, the guidelines are Part 4 and 5 Code of Practice (Charging and Financial Assessment).



The wording about investment bonds is virtually identical in each version, however, and specific that these policies are disregarded in the assessment for costs.

For example, the Scottish CRAG (April 2016) states:

6003 The treatment of investment bonds in the financial assessment for residential care is complex because, in part, of the differing products that are on offer. For this reason, local authorities should seek the advice of their legal departments when they arise However, it is possible to offer some general advice and local authorities are referred to the Social Security Commissioners decision R (IS) 7/98 which rules that an investment bond falls within the disregard by virtue of its intrinsic nature as a policy of life assurance.

6004 Local authorities are advised that if an investment bond is written as one or more life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset in the financial assessment for residential care (see paragraphs 15, Schedule 10 of the Income Support (General) Regulations 1987). In contrast, the surrender value of an investment bond without life assurance is taken into account.

6005 Income from investment bonds, with or without life assurance, is taken into account in the financial assessment for residential care. Actual payments of capital by periodic instalments from investment bonds, with or without life insurance, are treated as income and taken into account provided that such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £17,500. (See also 08015)

AOR – Assessment of Resources

Income from Investment Bonds

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8016 Income from investment bonds, with or without life assurance, is taken into account in the financial assessment for residential accommodation. Actual payments of capital by periodic instalments from investment bonds, with or without life insurance, are treated as income and taken into account provided that any such payments are outstanding on the first day that the resident becomes liable to pay for his accommodation and the aggregate of the outstanding instalment, and any other capital sum not disregarded, exceed £17,500. (See also 06003, 06004 and 06005)

One matter to be very careful about is that an investment bond is not specifically taken out because of care cost concerns.

There are two reasons for this; the risk of being accused of deprivation and the regulators view on the matter.

Anyone who places funds into investment bonds, where a motive for the investment is to avoid a care fees charge, runs the risk of triggering the deprivation rules and having the value of those bonds treated as a capital asset for the purposes of means testing.

The Guidance Notes are very clear on this point:

6.057 The local authority should only consider questions of deprivation of capital when the resident ceases to possess capital which would otherwise have been taken into account…

6.063 The timing of the disposal should be taken into account when considering the purpose of the disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation. The local authority should bear in mind, however, that deprivation can be considered for resources disposed of at any time...

This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at March 2021 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.

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