

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 1 – Community Care

Charging and not charging for social care

Section 1 - Regulations as respects charging and not charging for social care

8. This section requires that those aspects of social care (defined in section 22) which are nursing, personal and other care shall not be charged for and gives the Scottish Ministers power to make orders and regulations which can adjust the detail and content of the social care which should be free. It also gives the Ministers power to make regulations to require local authorities to charge, or not to charge, for the remaining aspects of social care and to specify the factors which local authorities must take into account in determining the amount of any charge. The requirements of this section, and the use of the powers it provides, override other provisions relating to local authorities' charges for social care (in section 87 of the 1968 Act).
9. The section therefore provides the legislative means for the implementation of free nursing, personal and other care and provides power to regularise the remaining charges for non-residential care ('home care').
10. Subsection (1) precludes local authorities from charging for social care which is personal care and personal support (as defined in the 2001 Act), nursing care and the types of care listed in schedule 1 (Social care not ordinarily charged for). This includes help with washing and eating which forms part of "personal care" as defined in the 2001 Act. Subsection (2) enables the Scottish Ministers to make regulations to qualify this requirement not to charge and to make orders to amend schedule 1. Subsection (3) clarifies that "nursing care", which is not defined elsewhere in the Act, does not include care which is personal care or personal support or is mentioned in schedule 1.
11. Subsection (4) enables the Scottish Ministers to define in regulations which of those remaining aspects of social care (not covered by the requirement for free care in subsection (1)) are or are not to be charged for. It also provides the flexibility for the regulations to specify the amount that should be charged or the factors to be considered in determining the amount of the charge. Where regulations require that no charge is to be made, they may qualify that requirement in such ways as Scottish Ministers see fit.
12. Subsection (5) amplifies the flexibilities provided in subsection (4). It expands on those powers to make clear that regulations may require the capping of charges and may also specify how a person's means should be taken into account as part of the charging process.
13. Subsection (6) amends the 1968 Act to disapply section 87(1) and (1A) of that Act where charging for social care is regulated under section 1 of the Act. This ensures that charges for relevant aspects of social care are not levied under the 1968 Act where this

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

Act makes provision for charging or not charging. (Regulations under section 2 of the Act will clarify which of the two Acts will apply as respects the particular aspects of social care in residential care settings.)

14. Subsection (7) allows for regulations to make transitional provisions which modify the effect of subsections (1) and (2) of section 12A of the 1968 Act for people already in care homes when section 1 of the Act is commenced. (Section 12A of the 1968 Act sets out local authorities' responsibilities in assessing people's care needs).