



Community Care and Health (Scotland) Act 2002

2002 asp 5

PART 1

COMMUNITY CARE

Accommodation

2 Accommodation provided under 1968 Act etc.

For the purposes of the definition of “social care” in section 22(1) and (2) of this Act, of sections 22 (charges to be made for accommodation), 26 (provision of accommodation in premises maintained by voluntary organisations) and 65 (general provisions as to application to Scotland) of the 1948 Act and of section 87(2) and (3) (charges that may be made for accommodation) of the 1968 Act, the Scottish Ministers may by regulations determine what is and what is not to be regarded as accommodation provided under the 1968 Act or under section 7 of the 1984 Act (arrangements in relation to persons who are or have been suffering from mental disorder).

3 Disregarding of resources when determining whether to make available assistance by providing residential accommodation

In section 12 of the 1968 Act (general social welfare services of local authorities), for subsections (3A) and (3B) there is substituted—

“(3A) In determining, for the purposes of this section, whether to make available assistance by providing, or securing the provision of, residential accommodation to a person, a local authority shall disregard so much of the person’s resources—

(a) as may be prescribed; or

(b) as is determined by them in such a way as may be prescribed,

and any order made by virtue of this subsection may make different provision for different cases and for different persons.

(3B) An order made by virtue of paragraph (a) of subsection (3A) of this section may prescribe circumstances in which assistance such as is mentioned in that subsection is to be made available disregarding entirely a person's resources.

(3C) In subsections (3A) and (3B) of this section, references to a person's resources are to resources within the meaning of the order prescribing the amount, or as the case may be the way, in question.

(3D) A statutory instrument made in exercise of the power conferred by paragraph (a) or (b) of subsection (3A) of this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

4 Accommodation more expensive than usually provided

(1) The Scottish Ministers may by regulations make provision, in relation to accommodation provided under the 1968 Act or under section 7 of the 1984 Act (functions of local authorities), for and in connection with the making of additional payments—

- (a) by persons for whom the accommodation is provided (in this section referred to as “residents”); or
- (b) by other persons, including those liable to maintain residents by virtue of section 42 of the 1948 Act (liability to maintain wife or husband and children).

(2) In subsection (1) above “additional payments”, in relation to a resident, means payments which—

- (a) are made for the purpose of meeting all or part of the difference between the actual cost of the accommodation and the amount that the local authority providing it would usually expect to pay in order to provide accommodation suitable for a person with the assessed needs of the resident; and
- (b) if they are made by the resident, are made out of such of that person's resources as are specified in, or determined in accordance with, the regulations in question.

(3) Such regulations are, for the purposes of subsection (2) above, to define the expression “resources”.

5 Local authority arrangements for residential accommodation outwith Scotland

(1) In fulfilment of their duty under section 12(1) (arranging for provision of residential accommodation, etc.) or 13A(1) (arranging for provision of residential accommodation with nursing) of the 1968 Act, a local authority—

- (a) may, in accordance with regulations made by the Scottish Ministers; and
- (b) must, if and to such extent as the Scottish Ministers so direct, in accordance with such regulations and with that direction,

make arrangements for the provision of residential accommodation in an appropriate establishment in England and Wales, or in Northern Ireland, any of the Channel Islands or the Isle of Man.

(2) Regulations under subsection (1) above may, subject to subsection (4) below, modify any of the provisions of the 1968 Act in their application to such arrangements.

(3) Arrangements made, before the date on which this section comes into force, by a local authority under section 12(1) of the 1968 Act for the provision of residential

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accommodation in an appropriate establishment (whether or not the establishment was an appropriate establishment when the arrangements were made) are deemed to have been made by virtue of paragraph (a) of subsection (1) above.

- (4) Subsection (2) of section 13A of the 1968 Act does not apply in relation to arrangements made under subsection (1) above and subsection (3) of that section does not apply in relation to premises where accommodation is provided by virtue of subsection (1) above.
- (5) In subsections (1) and (3) above, “appropriate establishment” means, in relation to—
- (a) section 12 of the 1968 Act—
 - (i) as respects England and Wales, an establishment carried on or managed by a person registered in respect of it under Part II of the Care Standards Act 2000 (c. 14); and
 - (ii) as respects Northern Ireland, any of the Channel Islands or the Isle of Man, an establishment of such description as may be specified in regulations under subsection (1) above; and
 - (b) section 13A of the 1968 Act, such establishment as is mentioned in—
 - (i) sub-paragraph (i) of paragraph (a) above, if that establishment is an independent hospital, in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983 (c. 20), or a care home; and
 - (ii) sub-paragraph (ii) of that paragraph, if that establishment conforms to such requirements as may be specified in regulations under subsection (1) above.
- (6) In subsection (5)(b)(i) above—
- “care home” has the meaning given by section 3 of the Care Standards Act 2000; and
 - “independent hospital” has the meaning given by section 2(2) (as read with section 121(1)) of that Act.

6 Deferred payment of accommodation costs

- (1) Where—
- (a) a local authority are providing, or have secured the provision of, residential accommodation for a person under the 1968 Act or section 7 of the 1984 Act (functions of local authorities), or are proposing to make or secure such provision; and
 - (b) that person is or would be liable, by virtue of section 87(3) of the 1968 Act (charges that may be made for accommodation) or section 4 of this Act, to make any payment to the authority in respect of the accommodation,
- the authority may, in accordance with regulations made by the Scottish Ministers, and must, if the Scottish Ministers so direct, in accordance with such regulations and with that direction, enter into a deferred payment agreement with the person.
- (2) A “deferred payment agreement” is an agreement which provides—
- (a) that payment of the portion mentioned in subsection (3) below (the “relevant portion”) of all or certain payments for which the person is, or would be, liable as mentioned in subsection (1)(b) above from a date specified in the agreement (which may be earlier than the date on which the agreement takes effect) will be deferred until, and become due on whichever is the earlier of—

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- (i) the expiry of 56 days after the date of death of the person; or
 - (ii) such date as may be specified in a written notice of termination of the agreement given to the authority by that person in accordance with the agreement;
 - (b) that—
 - (i) no interest will accrue in respect of the relevant portion while payment of that portion is deferred; but
 - (ii) interest will accrue in respect of the relevant portion from the earlier of the dates mentioned in sub-paragraphs (i) and (ii) of paragraph (a) above, until the date payment of that portion is made, the rate being such as may be determined by the authority in accordance with directions given to them by the Scottish Ministers;
 - (c) that the person will grant in favour of the authority a standard security for the purpose of securing the payment to them of such amounts as the authority determine are a reasonable estimate of—
 - (i) the relevant portion of payments deferred as mentioned in paragraph (a) above until the expiry of the time mentioned in sub-paragraph (i) of that paragraph; and
 - (ii) the amount of interest on that portion which might accrue thereafter in accordance with paragraph (b)(ii) above; and
 - (d) for such other matters as may be determined by the local authority.
- (3) The relevant portion is such portion of the payments as may be specified in, or determined in accordance with, the regulations.
- (4) Any determination by a local authority under subsection (2) above must accord with any directions given to them under this section by the Scottish Ministers.
- (5) Directions given by the Scottish Ministers under this section must be given to local authorities collectively.