



# Community Care and Health (Scotland) Act 2002

2002 asp 5

## PART 1

### COMMUNITY CARE

#### *Charging and not charging for social care*

#### **1 Regulations as respects charging and not charging for social care**

- (1) Subject to subsection (2)(a) below, a local authority are not to charge for social care provided by them (or the provision of which is secured by them) if that social care is—
- personal care as defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 ([asp 8](#));
  - personal support as so defined;
  - whether or not such personal care or personal support, care of a kind for the time being mentioned in schedule 1 to this Act; or
  - whether or not from a registered nurse, nursing care.
- (2) The Scottish Ministers may (either or both)—
- by regulations qualify the requirements of subsection (1) above in such way as they think fit;
  - by order amend schedule 1 to this Act.
- (3) In paragraph (d) of subsection (1) above, “nursing care” does not include such social care as falls within any of paragraphs (a) to (c) of that subsection.
- (4) Subject to subsection (1) above, the Scottish Ministers may by regulations—
- require a local authority—
    - to charge; or
    - not to charge,for such social care provided by (or the provision of which is secured by) the authority as may be specified in the regulations;

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- (b) where a requirement is made under paragraph (a)(i) above, specify the amount to be charged or factors which the authority must (either or both)—
    - (i) take into account;
    - (ii) not take into account,
 in determining any such amount; and
  - (c) where a requirement is made under paragraph (a)(ii) above, qualify that requirement in such way as they think fit.
- (5) Regulations under subsection (4) above may—
- (a) specify, as a factor which the authority must take into account by virtue of paragraph (b) of that subsection, the maximum amount which may be charged for the social care in question or for that and such other social care (being social care provided to the same person by the authority) as may be specified in the regulations; or
  - (b) provide that a person who, in such manner and by reference to such factors as may be specified in the regulations, is assessed by the authority as unable to pay the amount falling to be charged by virtue of that paragraph is required to pay only so much as appears from the assessment to be reasonably practicable for that person.
- (6) In section 87 of the 1968 Act (charges that may be made for services and accommodation), after subsection (1A) there is inserted the following subsection—
- “(1B) Subsections (1) and (1A) above do not apply as respects any amount required not to be charged by subsection (1) of section 1 of the Community Care and Health (Scotland) Act 2002 (asp 5) (charging and not charging for social care) or required to be charged or not to be charged by virtue of subsection (4) of that section.”.
- (7) Regulations under this section may make such transitional provision as the Scottish Ministers consider necessary or expedient, modifying either or both of subsections (1) and (2) of section 12A of the 1968 Act (duty of local authority to assess needs of certain persons for community care services) in their application to persons who, immediately before the date of coming into force of this section, were receiving such services in residential accommodation and for whom the local authority were not, at that time, providing or securing the provision either of the services or the accommodation.

### *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 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—

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- (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—
    - (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.

*Direct payments***7 Direct payments**

In section 12B of the 1968 Act (which empowers a local authority to make direct payments to a person who is of a specified description, being a person in need, so that the person may secure the provision of a community care service)—

- (a) in subsection (1)—
  - (i) for the words “a person in need” there is substituted “any person”;
  - (ii) in paragraph (b), after the word “is”, where it first occurs, there is inserted “not”;
  - (iii) for the words “may, if the person consents” there is substituted “shall, if and while (the payment having been offered by the authority) either the person consents or consent is duly given on his behalf,”; and
  - (iv) for the words “think fit” there is substituted “determine to be appropriate”.
- (b) after subsection (1) there is inserted—
  - “(1A) The amount of any payment made, under subsection (1) above, with or without first assessing the person’s ability to contribute to securing the provision of the service in question, may be determined on the supposition that he has no such ability; but this subsection is subject to subsection (5A) below.
  - (1B) Consent is duly given as mentioned in subsection (1) above if—
    - (a) the authority are satisfied that the person on whose behalf it is given is himself incapable of giving it; and
    - (b) the person who gives it is of a category specified for the purposes of that subsection by regulations,
 and such regulations may authorise the person so consenting to intromit with the payment and to do anything requisite to secure the provision of the service.
  - (1C) The reference in subsections (1) to (1B) above to securing the provision of the service is to securing its provision by any person, including the authority themselves (provided that both they and the consenting person so wish) or any other local authority.”;
- (c) in subsection (4), for the words “power conferred by subsection (1) above shall not be exercisable” there is substituted “duty imposed by subsection (1) above shall not apply”, the words from “provide” to the end (as so modified) shall be paragraph (a) and after that paragraph there is inserted—
  - “(b) impose preconditions which must be fulfilled if the service concerned is, by virtue of that subsection, to be provided by the authority by whom the payment under that subsection is made and special conditions which shall apply as respects a service so provided by them;
  - (c) specify circumstances in which the authority are not required to make payments under that subsection (whether circumstances relating to the person in question or to the service in question or to both);

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- (d) specify circumstances in which the authority may or must terminate the making of such payments; and
  - (e) authorise such payments to be made, on behalf of the payee, to some other person of a category specified, for the purposes of this subsection, by regulations;”; and
- (d) after subsection (5) there is inserted—
- “(5A) An authority who have made a determination by virtue of subsection (1A) above in respect of a payment—
- (a) having first assessed the recipient’s ability to contribute to securing the provision of the service in question, may; or
  - (b) other than is mentioned in paragraph (a) above, shall thereafter make such an assessment and may,
- having regard to the assessment, require from him such repayment as appears to them appropriate.
- (5B) If the person from whom a repayment is required under subsection (5A) above satisfies the authority that, notwithstanding the assessment to which regard was had in making the requirement, his means are insufficient for it to be reasonably practicable for him to make that repayment, the authority shall adjust the requirement so that the amount to be repaid becomes an amount which appears to them to be reasonably practicable for him to repay.”.

### *Carers*

## **8 Amendment of 1968 Act: matters to be taken account of in assessment of needs**

In section 12A of the 1968 Act (duty of local authority to assess needs of adults for community care services), for paragraph (b) of subsection (1), there is substituted—

- “(b) shall then decide, having regard to the results of that assessment, and taking account—
- (i) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and
  - (ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view),
- whether the needs of the person being assessed call for the provision of any such services.”.

## **9 Amendment of 1968 Act: assessment of ability to provide care etc.**

- (1) In section 12A of the 1968 Act (duty of local authority to assess needs of adults for community care services), subsections (3A) to (3C) are repealed.
- (2) After that section there is inserted—

**“12AA Assessment of ability to provide care**

- (1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.
- (2) The local authority to whom the request is made shall—
  - (a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and
  - (b) if they then or subsequently make an assessment under subsection (1) (a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—
    - (i) in the assessment of the person cared for; and
    - (ii) in making their decision under subsection (1)(b) of that section as respects that person.
- (3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—
  - (a) by virtue of a contract of employment or other contract; or
  - (b) as a volunteer for a voluntary organisation.
- (4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33) (duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.
- (5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.
- (6) In this section, “community care services”, “disabled person” and “person” have the same meanings as in section 12A of this Act.

**12AB Duty of local authority to provide information to carer**

- (1) Where it appears to a local authority both that—
  - (a) a person aged eighteen or over (“the person cared for”) is a person for whom the authority are under a duty or have a power to provide community care services; and
  - (b) another person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for, the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.
- (2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act.”.



**10 Amendment of 1995 Act: matters to be taken into account in assessment of needs of child affected by disability**

In section 23 of the 1995 Act (assessment by local authority of needs of child affected by disability), after subsection (3) there is inserted—

“(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

(a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; and

(ii) the views of the carer,

provided that the parent, guardian, child or carer in question has a wish, or as the case may be, a capacity, to express a view.”.

**11 Amendment of 1995 Act: assessment of ability to provide care for disabled child etc.**

(1) For subsection (1) of section 24 of the 1995 Act (right of person who cares for disabled child to request, where an assessment of the needs of the child is being carried out, an assessment of the person’s ability to provide care), there is substituted—

“(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c. 44) or under section 22(1) of this Act.”.

(2) After that section, there is inserted—

**“24A Duty of local authority to provide information to carer of disabled child**

Where it appears to a local authority both that—

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- (a) a child is a disabled child for whom they must or may provide services under section 22(1) of this Act; and
- (b) a person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the child,

the local authority shall notify the carer that he may be entitled under section 24(1) of this Act to request an assessment of his ability to provide, or to continue to provide, care for the child.”.

## 12 Carer information strategies

- (1) The Scottish Ministers may require any Health Board to prepare and submit to them a strategy (a “carer information strategy”) for—
  - (a) informing carers who appear to the Board to be persons who may have rights under section 12AA of the 1968 Act or section 24 of the 1995 Act that they may have such rights; and
  - (b) ensuring that information about such rights is available free of charge to carers.
- (2) In requiring a Health Board to prepare a carer information strategy, the Scottish Ministers may specify—
  - (a) the date by which the strategy is to be submitted under subsection (1) above, or the period within which it is to be prepared under that subsection;
  - (b) the form and extent of the strategy and (subject to subsection (1) above) the matters which it is to include;
  - (c) the consultation that the Health Board must undertake in preparing the strategy; and
  - (d) the period to which the strategy is to relate.
- (3) A Health Board must provide a copy of their carer information strategy to any person who requests it.
- (4) A Health Board—
  - (a) may at any time; and
  - (b) must, when required to do so by the Scottish Ministers,
 review their carer information strategy and prepare and submit to the Scottish Ministers a revised carer information strategy.
- (5) In this section, references to “carers” are to persons who—
  - (a) care for persons who are patients (“patient” having the same meaning as in the 1978 Act); or
  - (b) are patients who care for other persons (whether or not those other persons are themselves patients),

this subsection being construed in accordance with the definition, in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8), of “a person who cares for”.