

2002 No. 170 (C. 10)

SOCIAL CARE

**The Community Care and Health (Scotland) Act 2002
(Commencement No. 1) Order 2002**

Made

28th March 2002

The Scottish Ministers, in exercise of the powers conferred by section 27(2) and (3) of the Community Care and Health (Scotland) Act 2002(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Community Care and Health (Scotland) Act 2002 (Commencement No. 1) Order 2002.

(2) In this Order “the Act” means the Community Care and Health (Scotland) Act 2002.

Appointed days

2.—(1) 1st April 2002 is the appointed day for the coming into force of sections 1(2) and (7), 2, 22, 25 (so far as it relates to paragraph 1(1) and (4) of schedule 2) and 26 of, and paragraph 1(1) and (4) of schedule 2 to, the Act.

(2) 13th May 2002 is the appointed day for the coming into force of sections 4, 6, 20, 21 and 24 of the Act.

(3) 1st July 2002 is the appointed day for the coming into force of sections 1(1), (3), (4), (5) and (6), 3 and 25 (so far as it relates to paragraph 1(5) of schedule 2) of, and schedule 1 and paragraph 1(5) of schedule 2 to, the Act.

(4) 1st September 2002 is the appointed day for the coming into force of sections 8 to 17 of the Act.

(5) 1st June 2003 is the appointed day for the coming into force of sections 7 and 25 (so far as it relates to paragraph 1(2) and (3) of schedule 2) of, and paragraph 1(2) and (3) of schedule 2 to, the Act.

HUGH HENRY

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
28th March 2002

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Community Care and Health (Scotland) Act 2002 (“the Act”).

1st April 2002 is the appointed day for the coming into force of sections 1(2) and (7), 2, 22, 25 (for certain purposes) and 26 of, and paragraph 1(1) and (4) of schedule 2 to, the Act. Section 1(2) and (7) enables regulations and orders to be made concerning free social care and enables transitional provisions to be made in those regulations. Section 2 of the Act enables the Scottish Ministers to make regulations which, for specified purposes, will determine what is and what is not to be regarded as accommodation provided under the Social Work (Scotland) Act 1968 (“the 1968 Act”) and under section 7 of the Mental Health (Scotland) Act 1984 (“the 1984 Act”). Section 22 of the Act is an interpretation provision. Section 26 of the Act enables the Scottish Ministers to give certain guidance and directions to local authorities and health service bodies. Section 25 of the Act introduces Schedule 2. Paragraph 1(1) and (4) of this schedule corrects an error in section 13A(2) of the 1968 Act.

13th May 2002 is the appointed day for the coming into force of sections 4, 6, 20, 21 and 24 of the Act. Section 4 enables the Scottish Ministers to make regulations allowing top-up payments to be made for accommodation that would be more expensive than that usually provided by a local authority under the 1968 Act or section 7 of the 1984 Act. Section 6 provides for the deferred payment of certain payments by a person to a local authority in accordance with regulations to be made by the Scottish Ministers. Section 20 makes amendments to the Road Traffic Act 1988 and to the Road Traffic (NHS Charges) Act 1999 to make reference to “other public places”. Section 21 amends section 85B(2) of the National Health Service (Scotland) Act 1978 in order to add the Mental Welfare Commission to the list of bodies that may be covered by the scheme made by the Scottish Ministers for meeting losses and liabilities of such bodies. Section 24 enables the Scottish Ministers to make orders making transitional provisions, etc.

1st July 2002 is the appointed day for the coming into force of sections 1(1), (3), (4), (5) and (6), 3 and 25 (for certain purposes) of, and schedule 1 and paragraph 1(5) of schedule 2 to, the Act. Sections 1(1) and (3) provide that no charge is to be made for certain social care provided or secured by a local authority. Section 1(4) and (5) enable regulations to be made by the Scottish Ministers concerning charges for social care, except that social care that is dealt with under section 1(1) of the Act. Section 1(6) amends section 87 of the 1968 Act to ensure that where a requirement to charge or not charge is made by or by virtue of the Act, the charging provisions of the 1968 Act do not apply in respect of the amounts to be charged or not charged. Section 3 amends section 12 of the 1968 Act to remove the existing provisions for capital limits below which a person is entitled to receive care in the form of residential accommodation, and above which a person may receive such care, and enables the Scottish Ministers to make regulations requiring local authorities to disregard the whole or any part of a person’s resources when assessing entitlement to residential accommodation. Schedule 1 specifies certain kinds of social care that are not ordinarily to be charged for by a local authority. Section 25 again introduces schedule 2. Paragraph 1(5) of that schedule makes an amendment to the 1968 Act which is consequential upon the amendment made by section 3.

1st September 2002 is the appointed day for the coming into force of sections 8 to 17 of the Act.

Sections 8 to 12 are a group of provisions concerning carers. Section 8 requires certain matters to be taken into account by a local authority after making an assessment of needs of an adult under the 1968 Act. Section 10 is a similar provision but relates to assessments of needs of disabled children under the Children (Scotland) Act 1995. Section 9 amends the 1968 Act to enable carers of adults under the 1968 Act to ask for an assessment, regardless of whether an assessment is carried out of the needs of the cared for person, of their ability to provide care. It also requires certain information to be provided to carers for a local authority. Section 11 is a similar provision but relates to carers of disabled children under the Children (Scotland) Act 1995. Section 12 enables the Scottish Ministers to require Health Boards to prepare and submit to them carers' information strategies.

Sections 13 to 17 are a group of provisions concerning joint working arrangements between local authorities and certain NHS bodies. Sections 13 and 14 enable payments to be made by one body to another in certain circumstances and in relation to functions prescribed by regulations made by the Scottish Ministers. Section 15 allows the delegation of prescribed functions between local authorities and NHS bodies and the making of payments and establishment of pooled budgets in connection with the delegation. Section 16 makes provision in relation to transfer of staff where such staff are transferred in accordance with regulations made under section 15. Section 17 enables the Scottish Ministers to give directions to local authorities and NHS bodies requiring certain joint working arrangements to be entered into.

1st June 2003 is the appointed day for the coming into force of sections 7 and 25 (for certain purposes) of, and paragraph 1(2) and (3) of schedule 2 to, the Act. These provisions amend the 1968 Act in order to require a local authority to make direct payments to recipients or prospective recipients of services under that Act who consent to receive such payments or on whose behalf such consent is given. Further, the amendments clarify that payments may be made on a gross or a net basis and make provision concerning assessment of a person's ability to contribute to the cost of services and provide for the recovery of contributions.

2002 No. 170 (C. 10)

SOCIAL CARE

**The Community Care and Health (Scotland) Act 2002
(Commencement No. 1) Order 2002**

£1.75

© Crown Copyright 2002

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 04/02 19593

