

2002 No. 533

SOCIAL CARE

**The Community Care (Joint Working etc.) (Scotland)
Regulations 2002**

Made

29th November 2002

Laid before the Scottish Parliament

Coming into force

1st January 2003

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SCHEDULE 3 Local Authority Functions for the Purposes of Joint Working Under Section 15 And the Scottish Ministers' Directions Under Section 17 of the Act

SCHEDULE 4 Arrangements for the Purposes of the Scottish Ministers' Directions Under Section 17 of the Act

The Scottish Ministers, in exercise of the powers conferred by sections 13(1), 14, 15(1), (2) and (4), 17(1)(a)(i) and (ii) and 17(1)(b)(ii), of the Community Care and Health (Scotland) Act 2002(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Care (Joint Working etc.) (Scotland) Regulations 2002 and shall come into force on 1st January 2003.

(2) In these Regulations—

“the Act” means the Community Care and Health (Scotland) Act 2002;

“local plan” means any plan made by, affecting or involving the participation of a local authority or NHS body (whether in common with any other person or not) which relates to any of the functions prescribed by these Regulations;

“arrangement” means any arrangement under section 15(1) of the Act;

“party” means any local authority or NHS body which participates or proposes to participate in an arrangement.

Payments by NHS bodies towards certain local authority expenditure

2.—(1) The functions prescribed for the purposes of section 13(1) of the Act (payments by NHS bodies to local authorities) are such functions of a local authority as are specified in Schedule 1.

(2) The conditions prescribed for the purposes of section 13(1) of the Act are—

(a) the NHS body shall before making a payment under section 13(1) of the Act be satisfied—

(i) that the proposed payment is likely to secure more effective use of resources than applying the equivalent amount on the provision by it of services in performance of any functions to which regulation 3 applies;

(ii) that the proposed payment is consistent with any local plan which relates to the function in respect of which the payment is to be made;

(iii) that, if the proposed payment is intended to meet or be applied towards capital costs in relation to the performance of any function to which this regulation applies, the amount of that payment shall be determined by it and the local authority before those costs are incurred; and

(iv) that the local authority to which the proposed payment is to be made intends to meet the balance of costs incurred or to be incurred in the performance of the function in respect of which the payment is to be made for so long as the NHS body and local authority consider necessary or desirable; and

(b) the NHS body and local authority shall enter into an agreement in writing in relation to the performance of the function and the payment and such agreement shall include terms as to—

(i) the function or functions which are the subject of the agreement;

(ii) the specific objectives which the payment is intended to help secure and how the attainment of those objectives is to be measured;

(iii) the establishment and operation by the local authority of systems of monitoring, accounting and audit in respect of the payment and performance of the function in respect of which it is to be applied;

(iv) the provision to the NHS body by the local authority of audited accounts of expenditure against payments received at such intervals as may be agreed;

(v) variation of the amount of payment by the NHS body as a result of any variation in the level of service provided by the local authority in performance of the function in respect of which the payment is made; and

(vi) consequences for the agreement where, in the event that the agreement is made in respect of the costs of acquiring land or buildings, such land or buildings are used for a purpose other than that for which the payment is made.

(a) 2002 asp 5. See section 22(1) for the definition of “prescribed” and section 23(3) as to the power to make regulations.

Payments by local authorities towards expenditure by NHS bodies on prescribed functions

3.—(1) Subject to paragraph (2), the functions prescribed for the purposes of section 14 of the Act (payments by local authorities to NHS bodies) are specified in Schedule 2.

(2) A function so specified shall not include one whose performance involves the provision of emergency ambulances.

(3) The conditions prescribed for the purposes of section 14 of the Act are—

- (a) the local authority shall before making a payment under section 14 of the Act be satisfied—
 - (i) that the proposed payment is likely to secure more effective use of resources than applying the equivalent amount on the provision by it of services in performance of any functions to which regulation 2 applies;
 - (ii) that the proposed payment is consistent with any local plan which relates to the function in respect of which the payment is to be made;
 - (iii) that, if the proposed payment is intended to meet or be applied towards capital costs in relation to the performance of any function to which this regulation applies, the amount of that payment shall be determined by the local authority and the NHS body before those capital costs are incurred; and
 - (iv) that the NHS body to which the proposed payment is to be made intends to meet the balance of costs incurred or to be incurred in the performance of the function in respect of which the payment is to be made for so long as the local authority and NHS body consider necessary or desirable; and
- (b) The local authority and NHS body shall enter into an agreement in writing in relation to the performance of the function and the payment and such agreement shall include terms as to—
 - (i) the function or functions which are the subject of the agreement;
 - (ii) the specific objectives which the payment is intended to help secure and how the attainment of those objectives is to be measured;
 - (iii) the establishment and operation by the NHS body of systems of monitoring, accounting and audit in respect of the payment and performance of the functions in respect of which it is to be applied;
 - (iv) the provision to the local authority by the NHS body of audited accounts of expenditure against payments received at such intervals as may be agreed;
 - (v) variation of the amount of payment by the local authority as a result of any variation in the level of service provided by the NHS body in performance of the function in respect of which the payment is made; and
 - (vi) consequences for the agreement where, in the event that the agreement is made in respect of the costs of acquiring land or buildings, such land or buildings are used for a purpose other than that for which the payment was made.

Functions prescribed for the purposes of section 15(2)(a) of the Act

4. The functions prescribed for the purposes of section 15(2)(a) of the Act (local authority functions prescribed for joint working) are specified in Schedule 3.

Functions prescribed for the purposes of section 15(2)(b) of the Act

5.—(1) Subject to paragraphs (2) and (3), the functions prescribed for the purposes of section 15(2)(b) of the Act (NHS body functions prescribed for joint working) are specified in Schedule 2.

(2) A function so specified shall not include one whose performance involves—

- (a) surgery, radiotherapy, termination of pregnancies, endoscopy, the use of class 4 laser treatments, and other treatments of an invasive nature; or
- (b) the provision of emergency ambulances.

(3) Functions under section 36 of the 1978 Act shall not include functions in relation to state hospitals.

Consultation

6.—(1) No less than 8 weeks prior to the commencement of a proposed arrangement, the parties shall jointly—

- (a) publicise the arrangement which they propose to enter into by placing an advertisement, in accordance with paragraph (2), in a daily or weekly newspaper circulating in the area in which it is proposed the arrangement will operate; and
 - (b) consult, in such manner as the parties consider appropriate, such persons or classes of persons in the area in which the arrangement is proposed to operate, who, in the opinion of the parties, are likely to be affected by such arrangement.
- (3) The advertisement required by paragraph (1) shall—
- (a) contain details of the arrangement which is proposed;
 - (b) contain an address to which representations in respect of the proposed arrangement may be made; and
 - (c) identify a date, no less than 8 weeks from the date on which the advertisement appears, before which representations may be made.

Consistency of arrangement with local plans

7.—(1) This paragraph applies where a local plan relates to any of the functions specified in regulation 4 or 5 as the case may be.

- (2) Where paragraph (1) applies, an arrangement shall be consistent with the local plan.

Requirements relating to affected employees

8.—(1) This paragraph applies where a proposed arrangement affects employees of either party.

- (2) Where paragraph (1) applies, the parties to the proposed arrangement shall jointly—
 - (a) consult the affected employees on the arrangement and the way in which the employees will be affected by it;
 - (b) give notice to the affected employees, in advance of commencement of the arrangement, of its terms, including—
 - (i) its commencement date;
 - (ii) its duration;
 - (iii) how they will be affected by it;
 - (iv) the grievance or other dispute resolution procedures which will be available to them in relation to the arrangement; and
 - (v) any other matters as appear to the parties to be appropriate; and
 - (c) afford the affected employees an opportunity to make representations to the parties.

Agreement in writing

- 9.** An arrangement shall be made by agreement in writing between all the parties.

Composition and management of fund established under section 15(1)(c) of the Act

10.—(1) A fund established and maintained under section 15(1)(c) of the Act (funds in furtherance of joint working) shall be composed of payments from at least 2 contributors, one of whom shall be a local authority and one of whom shall be an NHS body.

(2) The contributors to a fund established and maintained under section 15(1)(c) of the Act shall jointly nominate one contributor to exercise the functions set out in paragraph (3).

- (3) The functions referred to in paragraph (2) are—
 - (a) holding the fund;
 - (b) preparing and maintaining financial accounts in respect of the fund;
 - (c) preparing the following—
 - (i) quarterly reports on payments into and out of the fund;
 - (ii) an annual return;
 - (iii) an audited memorandum account; and

(iv) such other information as is reasonably required by each contributor to enable that contributor to monitor the effectiveness of the agreement.

(4) The reports, return and account referred to in paragraph (3)(c)(i) to (iii) shall be submitted to the other contributors as soon as practicable after they are prepared and, in the case of the information referred to in paragraph (3)(c)(iv), upon request.

(5) The audited memorandum account shall be reproduced in the accounts of each contributor.

Terms to be included in written agreements

11. An arrangement shall, in addition to terms as to any of the matters required by regulations 6 to 10 (where they apply), include terms as to—

- (a) names and addresses of the parties to the agreement;
- (b) where the arrangement is in pursuance of section 15(1)(a)(i) of the Act (delegation to NHS bodies of local authority functions)—
 - (i) the functions which are the subject of the agreement; and
 - (ii) the functions in conjunction with which they are being exercised;
- (c) where the arrangement is in pursuance of section 15(1)(a)(ii) of the Act (delegation to local authorities of NHS body functions)—
 - (i) the functions which are the subject of the agreement; and
 - (ii) the functions in conjunction with which they are being exercised;
- (d) where the arrangement is under section 15(1)(b) of the Act (making payments in pursuance of delegation), the level of payment made under either section 15(1)(b)(i) or (ii) of the Act as the case may be, and the circumstances in which such payment may be varied or terminated;
- (e) the aims and outcomes intended to be achieved by the agreement;
- (f) the persons who, and the kinds of services which, are the subject of the agreement;
- (g) the staff, goods, services or accommodation to be provided under the agreement;
- (h) the duration, manner of review, variation, termination of and the handling of any breach of the agreement;
- (i) the monitoring of performance of the agreement by the parties; and
- (j) the handling of complaints by persons affected by the arrangement.

Notification to the Scottish Ministers

12. The parties to an arrangement shall jointly notify the Scottish Ministers of that arrangement as soon as practicable after it commences.

Functions prescribed for the purposes of section 17(1)

13.—(1) The functions prescribed for the purposes of section 17(1)(a)(i) of the Act (directions by the Scottish Ministers relating to local authority functions) are specified in Schedule 3.

(2) Subject to paragraph (3), the functions prescribed for the purposes of section 17(1)(a)(ii) of the Act (directions by the Scottish Ministers relating to NHS body functions) are specified in Schedule 2.

(3) Regulation 5(2) and (3) shall apply to functions prescribed by paragraph (2) of this regulation as they apply to functions prescribed by regulation 5(1).

Arrangements other than delegation etc.

14. The arrangements prescribed for the purposes of section 17(1)(b)(ii) of the Act (arrangements which the Scottish Ministers may direct) are specified in Schedule 4.

St Andrew's House,
Edinburgh
29th November 2002

MALCOLM CHISHOLM
A member of the Scottish Executive

SCHEDULE 1

LOCAL AUTHORITY FUNCTIONS FOR THE PURPOSES OF PAYMENTS UNDER
SECTION 13(1) OF THE 2002 ACT

The functions of local authorities under—

1. Sections 4, 5A, 5B, 12, 12A, 12B, 12C, 13, 13A, 13B, 14 and 59 of the 1968 Act**(a)**.
2. Sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act 1970**(b)**.
3. Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986**(c)**.
4. Sections 47 and 48 of the National Assistance Act 1948**(d)**.
5. Section 3 of the Disabled Persons (Employment) Act 1958**(e)**.
6. Sections 7, 8, 9 and 11 of the Mental Health (Scotland) Act 1984**(f)**.
7. Section 10 of the Adults with Incapacity (Scotland) Act 2000**(g)**.
8. Sections 1 to 8 of Part I, Part II and Part XIII of the Housing (Scotland) Act 1987**(h)**.
9. Part 1 of the Housing (Scotland) Act 2001**(i)**.
10. Section 6 of the Act.

(a) 1968 c.49.
(b) 1970 c.44.
(c) 1986 c.33.
(d) 1948 c.29.
(e) 1958 c.33.
(f) 1984 c.36.
(g) 2000 (asp 4).
(h) 1987 c.26.
(i) 2001 (asp 10).

SCHEDULE 2

NHS BODIES' FUNCTIONS FOR THE PURPOSES OF PAYMENTS UNDER SECTION 14, JOINT WORKING UNDER SECTION 15 AND THE SCOTTISH MINISTERS DIRECTIONS UNDER SECTION 17 OF THE ACT

1. Functions referred to in the following sections which are exercisable by NHS bodies—
Sections 19(1), 25(1), 26(1), 27(1), 36, 37 and 45 of the 1978 Act.
2. Functions of a National Health Service trust conferred by order made under section 12A(a), or by delegation under section 12AA(a)(b), of the 1978 Act.

(a) Section 12A(1) was inserted by section 31 of the National Health Service and Community Care Act 1990 (c.19).
(b) Section 12AA was inserted by section 47 of the Health Act 1999 (c.8).

SCHEDULE 3

LOCAL AUTHORITY FUNCTIONS FOR THE PURPOSES OF JOINT WORKING UNDER SECTION 15 AND THE SCOTTISH MINISTERS' DIRECTIONS UNDER SECTION 17 OF THE ACT

The functions of local authorities under—

1. Section 4, 5A, 5B, 12, 12A, 12AA, 12AB, 12B, 12C, 13, 13A, 13B, 14 and 59 of the 1968 Act.
2. Sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act 1970.
3. Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986.
4. Sections 47 and 48 of the National Assistance Act 1948.
5. Section 3 of the Disabled Persons (Employment) Act 1958.
6. Sections 7, 8 and 11 of the Mental Health (Scotland) Act 1984.
7. Sections 1 to 8 of Part I, Part II and Part XIII of the Housing (Scotland) Act 1987.
8. Part 1 of the Housing (Scotland) Act 2001.
9. Section 6 of the Act.

SCHEDULE 4

ARRANGEMENTS FOR THE PURPOSES OF THE SCOTTISH MINISTERS'
DIRECTIONS UNDER SECTION 17 OF THE ACT

1. Joint planning of services
2. Joint commissioning of services
3. Joint management of services
4. Joint assessment of aggregate needs for services
5. Joint delivery of services
6. Joint arrangements to improve access to services
7. Joint arrangements for the assessment and care management of individuals
8. Joint use of premises and facilities
9. Joint information services
10. Joint arrangements for the effective management of transitions between agencies
11. Joint arrangements to secure value for money
12. Joint arrangements for measuring and reporting on joint activity

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe those functions which may be the subject of payments or of delegation between local authorities and NHS bodies in accordance with Part 2 of the Community Care and Health (Scotland) Act 2002 (“the Act”) and the terms and conditions and related provisions, subject to which these arrangements take place.

Regulation 2(1) prescribes the local authority functions in respect of which NHS bodies may make payments to local authorities. Such payments may be made where the conditions provided in regulation 2(2) are satisfied.

Regulation 3(1) prescribes the NHS body functions in respect of which local authorities may make payments to NHS bodies. Such payments may be made where the conditions provided in regulation 3(2) are satisfied.

Regulations 4 to 12 make provision for delegation, making payments and establishment of joint funds (“joint working arrangements”).

Regulation 4 prescribes the local authority functions in respect of which joint working arrangements may be made.

Regulation 5 prescribes, subject to certain exclusions, the NHS body functions in respect of which joint working arrangements may be made.

Regulation 6 requires local authorities and NHS bodies to consult on proposed joint working arrangements.

Regulation 7 requires that such arrangements shall be consistent with any local plans affecting the prescribed functions.

Regulation 8 requires consultation with and provision of certain information to any employees affected by the arrangements.

Regulation 9 requires an arrangement to be made by written agreement.

Regulation 10 sets out the requirements for the composition and management of a joint fund.

Regulation 11 provides for the terms which written agreements shall contain.

Regulation 12 provides that the Scottish Ministers shall be notified of arrangements after they commence.

Regulation 13 prescribes those functions, in addition to the functions set out in section 15(2)(a) or (b) (as the case may be), inadequate exercise of which authorises the Scottish Ministers to direct a local authority or NHS body to enter into arrangements under the Act.

Regulation 14 prescribes the arrangements, other than those provided for in section 15(1)(a) to (c) of the Act, which the Scottish Ministers may direct local authorities or NHS bodies to enter into.

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