



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 [F1paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (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 [F2 subsection], 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.

Textual Amendments

- F1** Words in s. 1(1)(a) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 1 para. 10\(a\)](#)
- F2** Word in s. 1(7) substituted (7.6.2002) by [S.S.I. 2002/233](#), [art. 2](#)

Modifications etc. (not altering text)

- C1** S. 1(1) restricted (1.7.2002) by [S.S.I. 2002/303](#), [art. 3](#)

Commencement Information

- I1** S. 1 wholly in force at 1.7.2002; s. 1 not in force at Royal Assent see s. 27(2); s. 1(2)(7) in force at 1.4.2002 by [S.S.I. 2002/170](#), [art. 2\(1\)](#); s. 1(1)(3)-(6) in force at 1.7.2002 by [S.S.I. 2002/170](#), [art. 2\(3\)](#)

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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 [^{F3}sections 86 and 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 [^{F4}section 25 of the 2003 Act (provision of care and support services etc. for] persons who are or have been suffering from mental disorder).

Textual Amendments

- F3** Words in s. 2 substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. **65(2)**, 79(3); S.S.I. 2007/334, art. 2(b), sch. 2
- F4** Words in s. 2 substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. **28(2)(a)**, 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

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.”.

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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 [F5 section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder)], 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, F6....
- (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”.

Textual Amendments

- F5** Words in s. 4(1) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 12\(2\)](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F6** Words in s. 4(1)(b) repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 62\(3\), 79\(3\)](#); S.S.I. 2007/334, art. 2(b), sch. 2

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 [F7 or under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support)], 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 [F8 persons for whom such arrangements are made] .
- (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

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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.

- [^{F9}(5) In subsections (1) and (3) above, “appropriate establishment” means an establishment of such description or conforming to such requirements as may be specified in regulations under subsection (1).]

Textual Amendments

- F7** Words in s. 5(1) inserted (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(a)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)
- F8** Words in s. 5(2) substituted (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(b)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)
- F9** S. 5(5) substituted for s. 5(5)(6) (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(c)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)

Modifications etc. (not altering text)

- C2** S. 5(1) modified (24.6.2015) by The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 (S.S.I. 2015/202), regs. 1(1), **2(1)**
- C3** S. 5(3) modified (24.6.2015) by The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 (S.S.I. 2015/202), regs. 1(1), **2(1)**

Commencement Information

- I2** S. 5(1)(2) in force at 11.5.2015 for specified purposes by S.S.I. 2015/179, **art. 2(1)**
- I3** S. 5(1)(2) in force at 24.6.2015 in so far as not already in force by S.S.I. 2015/179, **art. 2(1)**
- I4** S. 5(3)-(6) in force at 24.6.2015 by S.S.I. 2015/179, **art. 2(2)**

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 [^{F10} section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder)], 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

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- (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.

Textual Amendments

- F10** Words in s. 6(1)(a) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 12\(3\)](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Direct payments

^{F117} **Direct payments**

Textual Amendments

- F11** S. 7 repealed (1.4.2014) by [The Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(Consequential and Saving Provisions\) Order 2014 \(S.S.I. 2014/90\)](#), art. 1, [sch. Pt. 1](#) (with art. 3)

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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.

^{F12}(2)

Textual Amendments

F12 S. 9(2) repealed (1.4.2018) by Carers (Scotland) Act 2016 (asp 9), s. 45(2), **sch. para. 3(2)**; S.S.I. 2017/152, reg. 4

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.”.

*Changes to legislation: There are currently no known outstanding effects for the
Community Care and Health (Scotland) Act 2002, Part 1. (See end of Document for details)*

F13 11 Amendment of 1995 Act: assessment of ability to provide care for disabled child etc.

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Textual Amendments

F13 S. 11 repealed (1.4.2018) by Carers (Scotland) Act 2016 (asp 9), s. 45(2), **sch. para. 3(3)**; S.S.I. 2017/152, reg. 4

F14 12 Carer information strategies

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Textual Amendments

F14 S. 12 repealed (1.4.2018) by Carers (Scotland) Act 2016 (asp 9), s. 45(2), **sch. para. 3(3)**; S.S.I. 2017/152, reg. 4

Changes to legislation:

There are currently no known outstanding effects for the Community Care and Health (Scotland) Act 2002, Part 1.