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—

(a) personal care as defined in **[**[F1]paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010**]** (asp 8);

(b) personal support as so defined;

(c) 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

(d) whether or not from a registered nurse, nursing care.

(2) The Scottish Ministers may (either or both)—

(a) by regulations qualify the requirements of subsection (1) above in such way as they think fit;

(b) 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—

(a) require a local authority—

(i) to charge; or

(ii) 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;

(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)**

Changes to legislation:
There are currently no known outstanding effects for the Community Care and Health (Scotland) Act 2002, Section 1.