

EXECUTIVE NOTE

THE COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002 (AMENDMENT TO SCHEDULE 1) ORDER 2009

SSI/2009/137

The above instrument is to be made in exercise of the powers conferred by section 1(2)(b) of the Community Care and Health (Scotland) Act 2002. The instrument is subject to draft affirmative resolution procedure. It would come into force on the day after the day on which it is made. The intention is that it will come into force on 1st April 2009.

Legal Background

Schedule 1 to the Community Care and Health (Scotland) Act 2002, which is part of the free personal and nursing care legislation, specifies certain types of social care that, when provided or secured by a local authority, are not to be charged for by that authority. Paragraph 2 of schedule 1 makes broad provision for non-charging as regards assisting with the preparation of food and in the fulfilment of special dietary needs.

This Order would amend schedule 1 to substitute paragraph 2, making general provision as regards non-charging for the preparation of food or assistance with the preparation of food and specifying certain specific tasks that are not to be charged for, such as defrosting, heating or re-heating, serving food, etc. The Order is intended to cover preparation of the person's own food, rather than shopping for food or supplying food, and there are therefore exceptions in this regard.

Policy objectives

The Independent Review of Free Personal and Nursing Care, chaired by Lord Sutherland of Houndwood, published its report on 28 April 2008. The Review report concluded that there had been inconsistencies in how councils operated charging for food preparation and that this had arisen from problems in interpreting the current legislation.

Scottish Ministers confirmed to Parliament that they considered the current legislation on this specific issue was not clear and committed to working with the Convention of Scottish Local Authorities (COSLA) to prepare revised legislation, to be introduced from 2009-10. The purpose of the Order is to clarify the legislation as regards what councils are not entitled to charge social care clients who have been assessed under section 12A of the Social Work (Scotland) Act 1968 as requiring assistance relating to food preparation.

The text of the draft Order was prepared and agreed by a joint working group involving representatives from the Scottish Government, COSLA and the Association of Directors of Social Work and was also the subject of consultation with Councils.

Financial effect

The Auditor General's report of his Review of Free Personal and Nursing Care, published in January 2008, found that 8 local authorities were charging clients for some food preparation services, whilst other councils did not charge, or had previously stopped charging clients, for these services. In January 2008, the Scottish Government and COSLA collected jointly from local authorities information about the current charges to clients for food preparation services and the charges forgone by those councils that stopped charging. Whilst full information was not provided by all councils, analysis of the returns suggested total additional estimated costs in respect of the 8 councils that currently charge of around £3.5 million per annum in lost charging income. Other councils that had previously stopped charging for food preparation services met the costs from within their existing total budget allocations.

Since 2002, the Scottish Government has provided councils with over £880 million in additional funding to assist with the costs of implementing the Free Personal and Nursing Care policy, alongside councils' general funding allocations for social care services for older people.

In line with the recommendations from Lord Sutherland's Independent Review, Scottish Ministers have agreed to provide £40 million in additional funding to councils from 2009-10 to assist them in implementing the Free Personal and Nursing Care policy, including any financial implications arising from the revised legislation on charging for food preparation. The £40 million will be distributed to all councils using the distribution methodology agreed with COSLA.

This approach was agreed by Scottish Ministers and COSLA elected members.

No Regulatory Impact Assessment has been prepared in respect of these Regulations as the changes have no impact on the cost to business.

Scottish Government
Primary and Community Care Directorate
Community Care Division