
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 65

SOCIAL CARE

**The Community Care (Joint Working etc.)
(Scotland) Amendment Regulations 2012**

<i>Made</i>	- - - -	<i>28th February 2012</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st March 2012</i>
<i>Coming into force</i>	- -	<i>30th March 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(1), 14, 15(1), (2) and (4) and 23(4) of the Community Care and Health (Scotland) Act 2002⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012 and come into force on 30th March 2012.

Amendment of the Community Care (Joint Working etc.) (Scotland) Regulations 2002

2. The Community Care (Joint Working etc.) (Scotland) Regulations 2002⁽²⁾ are amended as follows—

- (a) in regulation 1(2) after the definition of “the Act” insert—
““delegated” means delegated by virtue of an arrangement entered into under section 15(1) of the Act and “delegation” is to be construed accordingly (with the exception of the reference in Schedule 2, paragraph 2);”
- (b) omit regulation 2(2)(b)(iii) and (iv);
- (c) omit regulation 3(3)(b)(iii) and (iv);
- (d) in regulation 4 for “Schedule 3” substitute “Schedule 5”;
- (e) in regulation 5(1) for “Schedule 2” substitute “Schedule 6”;
- (f) after regulation 9 insert—

(1) 2002 asp 5. Section 22 defines “prescribed” as meaning prescribed by regulations made by the Scottish Ministers.
(2) S.S.I. 2002/533 as amended by S.S.I. 2005/445.

“Treatment of a payment under section 15(1)(b)

9A.—(1) Subsection (2) applies where a payment is made by virtue of an arrangement entered into under section 15(1)(b) of the Act and no fund is established under section 15(1)(c).

(2) A payment made by one party (“X”) to another party (“Y”) in respect of the exercise of a delegated function is to be treated as expenditure by X on that function and income in relation to that function by Y.”.

(g) in regulation 10—

(i) for paragraph (3)(c) substitute—

“(c) preparing such information as is reasonably required by each contributor to enable that contributor to monitor the effectiveness of the agreement and to account for that contributor’s share of the transactions, assets and liabilities in the fund.”; and

(ii) omit paragraphs (4) and (5);

(h) in regulation 11—

(i) in paragraph (i) after “agreement” insert “, including risk management,”;

(ii) omit “and” immediately after paragraph (i); and

(iii) after paragraph (j) insert—

“(k) the systems for financial management for payments made under the arrangement, including the frequency of the payments and the content and frequency of reporting on those payments; and

(l) a dedicated lead officer from each party who is responsible for ensuring the agreed aims and outcomes of the arrangement are delivered.”;

(i) in the title to Schedule 2 omit “, JOINT WORKING UNDER SECTION 15”;

(j) in the title to Schedule 3 omit “JOINT WORKING UNDER SECTION 15 AND”;

(k) after Schedule 4 insert Schedules 5 and 6 as set out in the Schedule to these Regulations.

St Andrew’s House,
Edinburgh
28th February 2012

NICOLA STURGEON
A member of the Scottish Executive

SCHEDULE

Regulation 2(k)

“SCHEDULE 5

Regulation 4

LOCAL AUTHORITY SERVICES PRESCRIBED FOR
JOINT WORKING UNDER SECTION 15 OF THE ACT

1.—(1) The functions of local authorities under the enactments specified in sub-paragraph (2) are prescribed for the purposes of—

- (a) delegation to an NHS body; and
- (b) use in conjunction with functions which have been delegated to an authority by an NHS body.

(2) Those enactments are—

- (a) section 48 of the National Assistance Act 1948(3);
- (b) section 3 of the Disabled Persons (Employment) Act 1958(4);
- (c) sections 4, 5A, 5B, 12, 12A, 12AA, 12AB, 12B, 12C, 13, 13ZA, 13A, 13B, 14, 27, 27ZA, 28, 29 and 59 of the 1968 Act(5);
- (d) sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act 1970(6);

-
- (3) 1948 c.29. Section 48 was amended by the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 31; the Adult Support and Protection (Scotland) Act 2007 (asp 10) (“the 2007 Act”), schedule 2 and the Health and Social Care Act 2008 (c.14), Schedule 15.
 - (4) 1958 c.33. Section 3 was amended by the Local Authority Social Services Act 1970 (c.42), Schedule 3; the Local Government Act 1972 (c.70), Schedules 23 and 30; the National Health Service Act 1977 (c.49), Schedule 15, paragraph 21; the Local Government Act 1985 (c.51), Schedule 17; the Local Government (Wales) Act 1994 (c.19), Schedules 10 and 18; the 1994 Act, Schedule 13, paragraph 49 and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraph 19.
 - (5) Section 4 was amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), Schedule 9, paragraph 10; the Children (Scotland) Act 1995 (c.36) (“the 1995 Act”), Schedule 4, paragraph 15 and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”), schedule 4, paragraph 1. Section 5A was inserted by the 1990 Act, section 52 and amended by the 1994 Act, Schedule 13, paragraph 76 and Schedule 14 paragraph 1 and by the 2003 Act, schedule 4, paragraph 1. Section 5B was inserted by the 1990 Act, section 52 and was amended by the 1994 Act, Schedule 13, paragraph 76 and the 1995 Act, Schedule 4, paragraph 15 and Schedule 5, paragraph 1. Section 12 was amended by the 1990 Act, Schedule 9, paragraph 10; the 1995 Act, Schedule 4, paragraph 15; the Immigration and Asylum Act 1999 (c.33) (“the 1999 Act”), section 120 and the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), sections 3 and 8. Section 12A was amended by the 1990 Act, section 55; the Carers (Recognition and Services) Act 1995 (c.12), section 2 and the 2002 Act, section 9. Sections 12AA and 12AB were inserted by the 2002 Act, section 9. Section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c.30) (“the 1996 Act”), section 4 and amended by the Regulation of Care (Scotland) Act 2001 (asp 8) (“the 2001 Act”), section 70 and the 2002 Act, sections 7 and 9 and schedule 2, paragraph 1. Section 12C was inserted by the 1996 Act, section 4 and amended by the 2002 Act, schedule 2, paragraph 1. Section 13 was amended by the 1996 Act, section 5. Section 13ZA was inserted by the 2007 Act, section 64. Section 13A was inserted by the 1990 Act, section 56 and amended by the 1999 Act, section 120; the 2001 Act, section 72 and schedule 3, paragraph 4 and the 2002 Act, schedule 2, paragraph 1. Section 13B was inserted by the 1990 Act, section 56 and amended by the 1999 Act, section 120. Section 14 was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7; the Health and Social Service and Social Security Adjudications Act 1983 (c.41), Schedule 10 and the 1990 Act, Schedule 9, paragraph 10. Section 27 was amended by the Community Service by Offenders (Scotland) Act 1978 (c.49), Schedule 2, paragraph 1; the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 61 and Schedule 6, paragraph 8; the 1994 Act, Schedule 13, paragraph 76; the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 6; the Criminal Justice (Scotland) Act 2003 (asp 7), section 71; the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), schedule 4, paragraph 1 and schedule 5, paragraph 1; the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 21; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 3; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 2, paragraph 31. Section 27ZA was inserted by the Criminal Justice (Scotland) Act 2003 (asp 7), section 71. Section 28 was amended by the Social Security Act 1986 (c.50), Schedule 11 and the 1995 Act, Schedule 4, paragraph 15. Section 29 was amended by the 1995 Act, Schedule 4, paragraph 15. Section 59 was amended by the 1990 Act, Schedule 9, paragraph 10; the 1995 Act, Schedule 4, paragraph 15; the 2001 Act, section 72 and the 2003 Act, section 25(4) and schedule 4, paragraph 1.
 - (6) 1970 c.44. Section 1 was amended by the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), section 9. Section 2(1) was amended by the Local Authority Social Services Act 1970 (c.42), Schedule 2, paragraph 12; the Local Government Act 1972 (c.70), Schedule 30 and the 1990 Act, Schedules 9 and 10.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (e) sections 22 and 23 of the Health and Social Services and Social Security Adjudications Act 1983(7);
 - (f) sections 3, 4, 7 and 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986(8);
 - (g) sections 1 to 8 of Part I, Part II and Part XIII of the Housing (Scotland) Act 1987(9);
 - (h) Part II of the Children (Scotland) Act 1995(10);
 - (i) Part 1 of the Housing (Scotland) Act 2001(11);
 - (j) section 6 of the Act;
 - (k) sections 25, 26, 27 and 33 of the Mental Health (Care and Treatment) (Scotland) Act 2003(12);
 - (l) Part 1 of the Adult Support and Protection (Scotland) Act 2007(13).
2. Section 87 of the 1968 Act is prescribed for the purpose of delegation to an NHS body but only for the purpose of recovering a charge for any function which has been delegated to an NHS body by a local authority.
3. The functions of local authorities under the following enactments are prescribed only for the purpose of use in conjunction with functions which have been delegated to an authority by an NHS body—
- (a) section 11 of the Matrimonial Proceedings (Children) Act 1958(14);
 - (b) sections 1 and 6B of the 1968 Act(15);
 - (c) section 50 of the Children Act 1975(16);
 - (d) sections 1, 4 and 125A of the Education (Scotland) Act 1980(17);
 - (e) the Foster Children (Scotland) Act 1984(18);
 - (f) sections 203 and 245A(11A) of the Criminal Procedure (Scotland) Act 1995(19);
 - (g) sections 2A and 34 of the Standards in Scotland's Schools etc. Act 2000(20);
 - (h) the Antisocial Behaviour etc. (Scotland) Act 2004(21);

(7) 1983 c.41. Section 22 was amended by the 1990 Act, section 45 and the Trusts of Land and Appointment of Trustees Act 1996 (c.47), Schedule 3, paragraph 21. Section 23 was amended by the 1990 Act, section 45 and by the Title Conditions (Scotland) Act 2003 (asp 9), schedule 14, paragraph 9.

(8) 1986 c.33.

(9) 1987 c.26.

(10) 1995 c.36.

(11) 2001 asp 10.

(12) 2003 asp 13. Section 25 was amended by S.S.I. 2011/211.

(13) 2007 asp 10.

(14) 1958 c.40.

(15) Section 1 was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7; the Local Government etc. (Scotland) Act 1973 (c.65), Schedule 27, paragraph 183 and Schedule 29; the Children Act 1989 (c.41), Schedule 15; the 1990 Act, Schedule 10; the 1994 Act, section 45 and Schedule 14, paragraph 1; the 1995 Act, Schedule 4, paragraph 15 and the 2003 Act, schedule 4, paragraph 1 and by S.S.I. 2005/465. Section 6B was added by the 1995 Act, section 100.

(16) 1975 c.72.

(17) 1980 c.44. Section 1 was amended by the Education (Scotland) Act 1981 (c.58) section 3; the Local Government and Planning (Scotland) Act 1982, Schedule 3, paragraph 37 and Schedule 4; the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) ("the 1989 Act"), Schedule 10, paragraph 8 and Schedule 11; the Further and Higher Education (Scotland) Act 1992 (c.37), section 2; the Standards in Scotland's Schools etc. Act 2000 (asp 6) ("the 2000 Act"), section 32, schedule 2 paragraph 3(2) and schedule 3 and the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), schedule 3, paragraph 3(2).

(18) 1984 c.56.

(19) 1995 c.46. Section 203 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 24 and the schedule, paragraph 26. Section 245A(11A) was added by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 121(3).

(20) 2000 asp 6. Section 2A was added by the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15), section 1.

(21) 2004 asp 4.

- (i) the Education (Additional Support for Learning) (Scotland) Act 2004(22);
- (j) the Adoption and Children (Scotland) Act 2007(23).

SCHEDULE 6

Regulation 5(1)

NHS FUNCTIONS PRESCRIBED FOR JOINT WORKING UNDER SECTION 15 OF THE ACT

1.—(1) The functions of NHS bodies under the enactments specified in sub-paragraph (2) are prescribed for the purposes of—

- (a) delegation to a local authority; and
- (b) being used in conjunction with functions which have been delegated to an NHS body by a local authority.

(2) Those enactments are—

- (a) sections 2A, 13, 16, 16A, 16B, 25(1), 26(1), 27(1), 36, 37, 38, 38A, 38B, 39, 40, 41, 42 and 45 of the 1978 Act(24);
- (b) sections 21 and 36 of the Children (Scotland) Act 1995;
- (c) sections 23 and 24 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

2. Section 98 of the 1978 Act is prescribed for the purpose of delegation to a local authority but only for the purpose of recovering a charge for any function which has been delegated to a local authority by a NHS body.

3. The functions of NHS bodies under the following enactments are prescribed only for the purpose of being used in conjunction with functions which have been delegated to an NHS body by a local authority—

- (a) section 2C, 17I, 43, and 64 of the 1978 Act(25);
- (b) section 7 of the Disabled Persons (Services, Consultation and Representation) Act 1986;
- (c) sections 40, 42 and 45 of the Adults with Incapacity (Scotland) Act 2000(26);

(22) 2004 asp 4.

(23) 2007 asp 7.

(24) Section 2A was inserted by the National Health Service (Scotland) Act 2004 (asp 7), section 9(2) and amended by the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”), schedule 17, paragraphs 2 and 3. Section 13 was amended by the 1990 Act, Schedule 9, paragraph 19 and by the 2010 Act, schedule 17, paragraph 5. Section 16 was amended by the Vehicle Excise and Registration Act 1994 (c.22), Schedule 3, paragraph 13 and the Health Services Act 1980 (c.53) (“the 1980 Act”), Schedule 7. Section 16A was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) (“the 1983 Act”), section 2 and was amended by the Local Government (Translation Amendments) (Scotland) Order 1996 (S.I. 1996/974); the 1994 Act, Schedule 13, paragraph 112 and Schedule 14; the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), schedule 3, paragraph 2 and the Housing (Consequential Provisions) Act 1985 (c.71), Schedule 2, paragraph 41. Section 16B was added by the 1983 Act, section 3. Section 25(1) was amended by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”), section 15. Section 27(1) was amended by the 1980 Act, section 20(2); the 1990 Act, Schedule 9, paragraph 19; the Medicinal Products: Prescription by Nurses etc. Act 1992 (c.28), section 3 and the Health and Social Care Act 2001 (c.15), section 44. Section 36 was amended by S.S.I. 2006/30. Section 38A was inserted by the Breastfeeding etc. (Scotland) Act 2005 (asp 1), section 4. Section 38B was inserted by the 2005 Act, section 11. Section 39 was amended by the Health and Medicines Act 1988 (c.49), section 10 and Schedule 3; the Education (Scotland) Act 1980 (c.44), Schedule 4, paragraph 17; the 1989 Act, Schedule 11, and the 2000 Act, schedule 3. Section 40 was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1) (“the 2004 Act”), schedule 1, paragraph 1.

(25) Section 2C was inserted by the 2004 Act, section 1 and amended by the National Health Service Reform (Scotland) Act 2004 (asp 7), schedule 1, paragraph 1; the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), section 37 and S.S.I. 2010/283. Section 17I was added by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 38 and amended by the 2004 Act, schedule 1, paragraph 1. Section 64 was amended by the Health and Social Security Act 1984 (c.48), Schedule 8 and the 2005 Act, schedule 2, paragraph 2 and by S.S.I. 2006/30.

(26) 2000 asp 4. Section 40 was amended by the 2001 Act, schedule 3, paragraph 23. Section 45 was amended by the 2001 Act, schedule 3, paragraph 23.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(d) the Public Health etc. (Scotland) Act 2008(27).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Community Care (Joint Working etc.) (Scotland) Regulations 2002 (“the 2002 Regulations”) to specify new functions which may be delegated between NHS bodies and local authorities. The Regulations also make some adjustments to the accounting requirements for arrangements under sections 13 to 15 of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”).

Regulation 2 makes the following amendments to the 2002 Regulations:

- (a) paragraphs (b) and (c) remove the necessity for a body to set up a system of monitoring and to provide audited accounts for payments under sections 13 or 14 of the 2002 Act;
- (b) paragraph (f) sets out the requirements where a payment is being made by virtue of an arrangement under section 15(1)(b) of the 2002 Act where a pooled fund is not being established under section 15(1)(c) of that Act;
- (c) paragraph (g) simplifies the requirements for a pooled fund established under section 15(1)(c) of the 2002 Act;
- (d) paragraph (h) imposes a duty for the written agreement to include terms regarding the financial management of payments made under the arrangement and for the specification of a lead officer from each party to the arrangement who is responsible for ensuring the aims and outcomes of the arrangement are achieved;
- (e) paragraphs (i) and (j) amend the titles to Schedules 2 and 3 to the 2002 Regulations to account for the insertion of the new Schedules. Schedules 2 and 3 of the 2002 Regulations previously prescribed functions for section 15(2) of the 2002 Act but those functions are now prescribed in the new Schedules inserted by these Regulations;
- (f) paragraph (k) inserts the new Schedules 5 and 6 into the 2002 Regulations (which are now cross-referred to in regulations 4 and 5 of the 2002 Regulations by virtue of paragraphs (c) and (d)).

New Schedule 5 prescribes the functions of a local authority which may be delegated to an NHS body and also prescribes those functions which a local authority may use in conjunction with functions which have been delegated to an authority by an NHS body. Paragraph 1 of that Schedule sets out functions which may be used for both of those purposes and paragraph 2 sets out those which may only be used for the latter.

New Schedule 6 makes parallel provision for NHS bodies.