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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 202**

**SOCIAL CARE**

**The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015**

<i>Made</i>	- - - -	<i>20th May 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th May 2015</i>
<i>Coming into force</i>	- -	<i>24th June 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(1) and 23(4) of the Community Care and Health (Scotland) Act 2002(1), and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 and come into force on 24th June 2015.

(2) In these Regulations—

“the 1968 Act” means the Social Work (Scotland) Act 1968(2);

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

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(3);

“health authority” means—

(a) in relation to Scotland, the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978(4);

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- (1) [2002 asp 5](#). Section 5 was amended by paragraph 3(4) of Schedule 1 to the Care Act 2014 ([c.23](#)). Section 5 was commenced for the purpose of making regulations by [S.S.I. 2015/179](#) on 11th May 2015 and for all remaining purposes on 24th June 2015.
- (2) [1968 c.49](#). Section 12 was amended by paragraph 15(11) of Schedule 4 to the Children (Scotland) Act 1995 ([c.36](#)); section 120(1) of the Immigration and Asylum Act 1999 ([c.33](#)); section 3 of the Community Care and Health (Scotland) Act 2002 ([asp 5](#)) and section 66(1) and paragraph 10(5) of Schedule 9 to the National Health Service and Community Care Act 1990 ([c.19](#)). Section 13A was amended by section 56 of the National Health Service and Community Care Act 1990; section 72(a) of the Regulation of Care (Scotland) Act 2001 ([asp 8](#)), paragraph 1(4) of Schedule 2 to the Community Care and Health (Scotland) Act 2002 ([asp 5](#)) and paragraph 1 of Schedule 2(1) [S.S.I. 2011/211](#).
- (3) [2003 asp 13](#). Section 25 was amended by Schedule 1(1) paragraph 13(3) of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order, [S.S.I. 2011/211](#).
- (4) [1978 c.29](#). Section 2(1)(a) was amended by paragraph 2(2) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 [asp 13](#); section 14(2) and paragraph 1 of Schedule 7 to the Health and Social Services and Social Security

- (b) in relation to England, the clinical commissioning group established in accordance with Chapter A2 of Part 2 of the National Health Service Act 2006<sup>(5)</sup>;
- (c) in relation to Wales, the Local Health Board established under section 11 of the National Health Service (Wales) Act 2006<sup>(6)</sup>; and
- (d) in relation to Northern Ireland, a Health and Social Care Trust established under article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991<sup>(7)</sup>;

“health services” means—

- (a) in relation to the Health Board in Scotland, services under the National Health Service (Scotland) Act 1978;
- (b) in relation to the clinical commissioning group in England, services under the National Health Service Act 2006;
- (c) in relation to the Local Health Board in Wales, services under the National Health Service (Wales) Act 2006; and
- (d) in relation to the Health and Social Care Trust in Northern Ireland, services under the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(8)</sup>.

### **Meaning of appropriate establishment**

2.—(1) For the purpose of section 5(1) and (3) of the 2002 Act, “appropriate establishment” has the meaning given in this Regulation.

(2) In relation to section 12 of the 1968 Act and section 25 of the 2003 Act it means—

- (a) as respects England and Wales, a care home within the meaning of section 3 of the Care Standards Act 2000<sup>(9)</sup>; and
- (b) as respects Northern Ireland, a residential care home within the meaning of article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>(10)</sup>.

(3) In relation to section 13A of the 1968 Act it means—

- (a) as respects England and Wales, a care home within the meaning of section 3 of the Care Standards Act 2000; and
- (b) as respects Northern Ireland, a nursing home within the meaning of Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

### **Duty of local authority to notify health authority of need for health services**

3. Where, in performance of its duty under section 12 or 13A of the 1968 Act or section 25 of the 2003 Act, a local authority is arranging the residential accommodation of a person under section 5 of the 2002 Act and it appears to the local authority that the person for whom such arrangements are being made may also be in need of health services administered by the health authority—

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Adjudications Act 1983 (c.41); paragraph 1(2)(a) of Schedule 1 to the National Health Service Reform (Scotland) Act 2004 asp 7 and section 28(a)(ii) of the National Health Service and Community Care Act 1990 (c.19).

(5) 2006 c.41.

(6) 2006 c.42.

(7) 1991 No. 194 (N.I. 1). Article 10 was amended by sections 32 and 34(3) of and paragraphs 1(1) and 13(7) of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1).

(8) 1972 No. 1265 (N.I. 14).

(9) 2000 c.14. Section 3 was amended by section 95 and paragraphs 4(2) and 4(3) of Schedule 5(1) to the Health and Social Care Act 2008 (c.14).

(10) 2003 No. 431 (N.I. 9).

- (a) in whose area the person is ordinarily resident; or
- (b) in whose area the residential accommodation is located;

regulation 4 applies.

- 4. The local authority must notify the health authority and—
  - (a) request information from them as to what health services are likely to be made available to that person by that health authority; and
  - (b) take any information received by them in response to that request into account in making the arrangements.

St Andrew's House,  
Edinburgh  
20th May 2015

*SHONA ROBISON*  
A member of the Scottish Government

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”) and come into force on 24th June 2015. Together with section 5 of the 2002 Act they make provision in respect of the way in which residential accommodation and residential accommodation with nursing, is provided outwith Scotland (that is to say England, Wales or Northern Ireland), to persons by a local authority in fulfilment of their duties under sections 12 or 13A of the Social Work (Scotland) Act 1968 (“the 1968 Act”) or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).

Regulation 2 defines the “appropriate establishment” into which a person’s residential accommodation placement outwith Scotland can be made.

Regulation 3 provides that where it appears to a local authority that a person for whom they are arranging residential accommodation under section 5 of the 2002 Act may also be in need of health services administered by the health authority of the area in which they are ordinarily resident or of the area in which the residential accommodation is located, then regulation 4 applies.

Regulation 4 imposes a duty on the local authority to notify the health authority of a person’s need for health services and to request information from the health authority about what health services are likely to be made available to the person by that health authority, and to take any information provided in response to that request into account in making the accommodation arrangements.