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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 section 2(28) of the Regulation of Care (Scotland) Act 2001 (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;

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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 **[**[F1]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 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 section 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 section 7 of the 1984 Act (arrangements in relation to persons who are or have been suffering from mental disorder).

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.".

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 section 7 of the 1984 Act (functions of local authorities), 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, including those liable to maintain residents by virtue of section 42 of the 1948 Act (liability to maintain wife or husband and children).

(2) In subsection (1) above "additional payments", in relation to a resident, means payments which—

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(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".

PROSPECTIVE

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 **[**[F2]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 **[**[F3]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 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.

[[F4](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

F2 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)

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F3 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)

F4 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)

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 section 7 of the 1984 Act (functions of local authorities), 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 (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.

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(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.

Direct payments

7 Direct payments

In section 12B of the 1968 Act (which empowers a local authority to make direct payments to a person who is of a specified description, being a person in need, so that the person may secure the provision of a community care service)—

(a) in subsection (1)—

(i) for the words "a person in need" there is substituted " any person ";

(ii) in paragraph (b), after the word "is", where it first occurs, there is inserted " not ";

(iii) for the words "may, if the person consents" there is substituted " shall, if and while (the payment having been offered by the authority) either the person consents or consent is duly given on his behalf, "; and

(iv) for the words "think fit" there is substituted " determine to be appropriate ".

(b) after subsection (1) there is inserted—

"(1A) The amount of any payment made, under subsection (1) above, with or without first assessing the person's ability to contribute to securing the provision of the service in question, may be determined on the supposition that he has no such ability; but this subsection is subject to subsection (5A) below.

(1B) Consent is duly given as mentioned in subsection (1) above if—

(a) the authority are satisfied that the person on whose behalf it is given is himself incapable of giving it; and

(b) the person who gives it is of a category specified for the purposes of that subsection by regulations,

and such regulations may authorise the person so consenting to intromit with the payment and to do anything requisite to secure the provision of the service.

(1C) The reference in subsections (1) to (1B) above to securing the provision of the service is to securing its provision by any person, including the authority themselves (provided that both they and the consenting person so wish) or any other local authority.";

(c) in subsection (4), for the words "power conferred by subsection (1) above shall not be excercisable" there is substituted " duty imposed by subsection (1) above shall not apply ", the words from "provide" to the end (as so modified) shall be paragraph (a) and after that paragraph there is inserted—

"(b) impose preconditions which must be fulfilled if the service concerned is, by virtue of that subsection, to be provided by the authority by whom the payment under that subsection is

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made and special conditions which shall apply as respects a service so provided by them;

(c) specify circumstances in which the authority are not required to make payments under that subsection (whether circumstances relating to the person in question or to the service in question or to both);

(d) specify circumstances in which the authority may or must terminate the making of such payments; and

(e) authorise such payments to be made, on behalf of the payee, to some other person of a category specified, for the purposes of this subsection, by regulations;"; and

(d) after subsection (5) there is inserted—

"(5A) An authority who have made a determination by virtue of subsection (1A) above in respect of a payment—

(a) having first assessed the recipient's ability to contribute to securing the provision of the service in question, may; or

(b) other than is mentioned in paragraph (a) above, shall thereafter make such an assessment and may,

having regard to the assessment, require from him such repayment as appears to them appropriate.

(5B) If the person from whom a repayment is required under subsection (5A) above satisfies the authority that, notwithstanding the assessment to which regard was had in making the requirement, his means are insufficient for it to be reasonably practicable for him to make that repayment, the authority shall adjust the requirement so that the amount to be repaid becomes an amount which appears to them to be reasonably practicable for him to repay.".

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.".

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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.

(2) After that section there is inserted—

"12AA Assessment of ability to provide care

(1) A person ("the carer") who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over ("the person cared for") may, whether or not the carer is a child, request a local authority to make an assessment ("the carer's assessment") of the carer's ability to provide or to continue to provide such care for that person.

(2) The local authority to whom the request is made shall—
- (a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and
- (b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer's assessment—
  - (i) in the assessment of the person cared for; and
  - (ii) in making their decision under subsection (1)(b) of that section as respects that person.

(3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—
- (a) by virtue of a contract of employment or other contract; or
- (b) as a volunteer for a voluntary organisation.

(4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33) (duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.

(5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.

(6) In this section, "community care services", "disabled person" and "person" have the same meanings as in section 12A of this Act.

12AB Duty of local authority to provide information to carer

(1) Where it appears to a local authority both that—
- (a) a person aged eighteen or over ("the person cared for") is a person for whom the authority are under a duty or have a power to provide community care services; and
- (b) another person ("the carer") provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,

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the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

(2) In this section, "community care services" and "person" have the same meanings as in section 12A of this Act.".

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.".

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

(1) For subsection (1) of section 24 of the 1995 Act (right of person who cares for disabled child to request, where an assessment of the needs of the child is being carried out, an assessment of the person's ability to provide care), there is substituted—

"(1) Subject to subsection (2) below, a person ("the carer") who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment ("the carer's assessment") of the carer's ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the child, or another person in the child's family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer's assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c.44) or under section 22(1) of this Act.".

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(2) After that section, there is inserted—

"**24A Duty of local authority to provide information to carer of disabled child**

Where it appears to a local authority both that—

(a) a child is a disabled child for whom they must or may provide services under section 22(1) of this Act; and

(b) a person ("the carer") provides, or intends to provide, a substantial amount of care on a regular basis for the child,

the local authority shall notify the carer that he may be entitled under section 24(1) of this Act to request an assessment of his ability to provide, or to continue to provide, care for the child.".

12 Carer information strategies

(1) The Scottish Ministers may require any Health Board to prepare and submit to them a strategy (a "carer information strategy") for—

(a) informing carers who appear to the Board to be persons who may have rights under section 12AA of the 1968 Act or section 24 of the 1995 Act that they may have such rights; and

(b) ensuring that information about such rights is available free of charge to carers.

(2) In requiring a Health Board to prepare a carer information strategy, the Scottish Ministers may specify—

(a) the date by which the strategy is to be submitted under subsection (1) above, or the period within which it is to be prepared under that subsection;

(b) the form and extent of the strategy and (subject to subsection (1) above) the matters which it is to include;

(c) the consultation that the Health Board must undertake in preparing the strategy; and

(d) the period to which the strategy is to relate.

(3) A Health Board must provide a copy of their carer information strategy to any person who requests it.

(4) A Health Board—

(a) may at any time; and

(b) must, when required to do so by the Scottish Ministers,

review their carer information strategy and prepare and submit to the Scottish Ministers a revised carer information strategy.

(5) In this section, references to "carers" are to persons who—

(a) care for persons who are patients ("patient" having the same meaning as in the 1978 Act); or

(b) are patients who care for other persons (whether or not those other persons are themselves patients),

this subsection being construed in accordance with the definition, in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8), of "a person who cares for".

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PART 2

JOINT WORKING ETC.

13 Payments by NHS bodies towards certain local authority expenditure

(1) An NHS body may, on such conditions as may be prescribed, after consulting the local authority in question, make payments to a local authority towards expenditure incurred, or to be incurred, by the authority in connection with the performance by them of such function of that authority as may be prescribed, being a function which, in the opinion of the body—

(a) has an effect in relation to the health of individuals;

(b) has an effect in relation to, or is affected by, any function of that body; or

(c) is connected with any function of that body.

(2) This section is without prejudice to section 16A of the 1978 Act (power to make payments towards expenditure on community services).

14 Payments by local authorities towards expenditure by NHS bodies on prescribed functions

A local authority may—

(a) if, in their opinion, to do so would be likely to lead to an improvement in the way in which their functions are exercised; and

(b) on such conditions as may be prescribed,

make payments to an NHS body towards expenditure incurred, or to be incurred, by the body in connection with the performance by it of such of its functions as may be prescribed.

15 Delegation etc. between local authorities and NHS bodies

(1) Any number of local authorities and NHS bodies may, in accordance with regulations made by the Scottish Ministers, enter into arrangements for—

(a) the delegation to—

(i) any of the NHS bodies of the exercise, in conjunction with functions mentioned in paragraph (b) of subsection (2) below, of functions mentioned in paragraph (a) of that subsection; and

(ii) any of the local authorities of the exercise, in conjunction with functions mentioned in paragraph (a) of that subsection, of functions mentioned in paragraph (b) of that subsection;

(b) the making of payments—

(i) by the local authority to the NHS body in connection with arrangements mentioned in paragraph (a)(i) above; and

(ii) by the NHS body to the local authority in connection with arrangements mentioned in paragraph (a)(ii) above; and

(c) for the purposes of paragraph (b) above and, if they so wish, also for the purpose of making payments towards expenditure incurred in exercising functions mentioned in subsection (2) below which are not delegated as mentioned in paragraph (a) above, the establishment and maintenance of a fund—

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(i) which may be held by any of the local authorities or NHS bodies;

(ii) to which any of the authorities and bodies (a "contributor") may make payments; and

(iii) out of which any contributor may make payments towards expenditure incurred by that contributor in exercising functions mentioned in subsection (2) below.

(2) The functions are—

(a) such functions of local authorities as may be prescribed; and

(b) such functions of NHS bodies as may be prescribed.

(3) Arrangements mentioned in subsection (1) above may be entered into by a local authority or an NHS body only if, in their opinion, to do so would be likely to lead to an improvement in the way in which functions mentioned in subsection (2) above are exercised; and for this purpose the reference to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.

(4) Regulations under subsection (1) above may in particular make provision—

(a) as to cases (or classes of case) as respects which a local authority or an NHS body may not enter into arrangements mentioned in that subsection;

(b) as respects consultation by local authorities and NHS bodies on proposals to enter into any such arrangements;

(c) as respects the provision of staff in connection with any such arrangements, including the transfer and secondment, and terms and conditions, of such staff;

(d) as respects the provision of goods, services or accommodation in connection with any such arrangements;

(e) requiring the approval of the Scottish Ministers to the entering into of any such arrangements or class of arrangements (including the circumstances in which such approval is required, how it is to be sought, and the grant, with or without modification, or refusal, of approval);

(f) for the variation or termination of any such arrangements, including variation or termination at the direction of the Scottish Ministers given after consultation with the local authorities and NHS bodies; or

(g) as to the monitoring and supervision by the local authorities and NHS bodies of arrangements entered into by virtue of subsection (1) above.

(5) Arrangements entered into by virtue of subsection (1) above—

(a) do not affect—

(i) the liability of a local authority in relation to the exercise of any of their functions;

(ii) the liability of an NHS body in relation to the exercise of any of its functions; or

(iii) any power or duty to recover sums in respect of services provided by such an authority or body in the exercise of any of their functions; and

(b) do not prevent any such authority or body from themselves, or itself, exercising—

(i) the delegated function; or

(ii) any power delegated with the function.

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16 Transfer of staff

(1) This section applies where, by virtue of section 15(4)(c) of this Act, a person is transferred from one entity (the "transferring authority") to another (the "receiving authority").

(2) The contract of employment between the person and the receiving authority has effect from the date of transfer as if originally made between the person and the transferring authority.

(3) Without prejudice to subsection (2) above—

(a) all the transferring authority's rights, powers, duties and liabilities under or in connection with the contract transfer, by virtue of this paragraph, to the receiving authority on that date; and

(b) anything done before that date by or in relation to the transferring authority in respect of that contract or of the employee is deemed as from that date to have been done by or in relation to the receiving authority.

(4) Subsections (2) and (3) above are without prejudice to any right of the person to terminate the contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but change is not to be taken to have occurred by reason only of the fact that the employer is changed by virtue of section 15(4)(c) of this Act.

(5) Where a person—

(a) has, prior to the date of transfer, entered into a contract of employment with the transferring authority and that contract is to come into effect on or after that date; and

(b) would, if the contract had come into effect before that date, have been a person to whom this section applies,

the person is treated as one to whom this section does apply.

17 Scottish Ministers' power to require delegation etc. between local authorities and NHS bodies

(1) Subject to subsection (4)(a) of section 15 of this Act, if in the opinion of the Scottish Ministers (formed after consultation with the local authority or NHS body in question) —

(a) any function—

(i) which is mentioned in paragraph (a) of subsection (2) of that section or which may be prescribed is not being exercised adequately by a local authority; or

(ii) which is mentioned in paragraph (b) of subsection (2) of that section or which may be prescribed is not being exercised adequately by an NHS body; and

(b) it would be likely to lead to an improvement in the way in which the function is exercised if the authority or the body in question were to enter into—

(i) arrangements mentioned in subsection (1) of that section; or

(ii) such other arrangements as may be prescribed,

as respects the function (the "principal function"),

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the Scottish Ministers may direct the local authority or, as the case may be, the NHS body to enter into such arrangements as may be specified in the direction as respects the principal function and such other function as is mentioned in subsection (2) below.

(2) The other function is any other function of the authority or body which the Scottish Ministers consider would, if it were exercised in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the principal function.

(3) Where the Scottish Ministers direct a local authority or NHS body to enter into arrangements mentioned in paragraph (b)(ii) of subsection (1) above, then if in the opinion of the Ministers (formed after consultation with the local authority or NHS body in question) it would be appropriate to do so, they may also direct—

(a) the local authority to make under this section, on such conditions as are prescribed under paragraph (b) of section 14 of this Act and in accordance with the direction, such payments to an NHS body as are mentioned in that section, in connection with the performance by the NHS body of any function prescribed under paragraph (a)(ii) of subsection (1) above, if in the opinion of the Ministers, to make those payments would be likely to lead to an improvement in the way in which the local authority's functions are exercised; or

(b) the NHS body to make under this section, on such conditions as are prescribed under subsection (1) of section 13 of this Act and in accordance with the direction, such payments to a local authority as are mentioned in that subsection, in connection with the performance by the local authority of any function prescribed under paragraph (a)(i) of subsection (1) above which, in the opinion of the Ministers, satisfies any of the requirements mentioned in paragraphs (a) to (c) of subsection (1) of that section.

(4) In this section, any reference to an improvement in the way in which functions are exercised is to be construed in the same way as in section 15 of this Act.

(5) The Scottish Ministers, when giving a direction under subsection (1) above (a "principal direction"), may give a direction under this subsection (a "secondary direction") to such other local authority or NHS body as they consider appropriate, such secondary direction being for or in connection with securing that full effect is given to the principal direction.

(6) Arrangements entered into in pursuance of a direction under this section must comply with such requirements, which in the case of arrangements mentioned in subsection (1) of section 15 of this Act are to be additional to those contained in regulations under subsection (4) of that section, as may be specified in that direction.

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PART 3

HEALTH

PROSPECTIVE

Health Boards' lists

VALID FROM 01/04/2004

18 Services lists and supplementary lists

(1) After section 17E of the 1978 Act there is inserted—

"**17EA Services lists**

(1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to perform personal medical services—
(a) in accordance with section 17C arrangements; or
(b) in connection with the provision of such services under a pilot scheme.

(2) Such a list is in this Act referred to as a "services list".

(3) A medical practitioner whose name is not included in the Board's medical list or supplementary list may not perform medical services in the Board's area—
(a) in accordance with such arrangements; or
(b) in such connection
unless his name is included in the Board's services list as that of a person approved to do so.

(4) The regulations may (either or both)—
(a) make provision for the application (with such modifications as the Scottish Ministers think fit) to services lists or to persons who are, have been or seek to be included in a services list, of;
(b) in relation to such lists and persons, make provision analogous to any provision made by,
any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.

17EB Application for inclusion in services list

(1) No medical practitioner—
(a) who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in a Health Board's services list unless he satisfies the Board that he has that knowledge of English which, in the interests of

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himself and his patients, is necessary for the performance of personal medical services in the Board's area; or

(b) shall be so entitled unless he is suitably experienced.

(2) For the purposes of subsection (1)(b) a medical practitioner is "suitably experienced" if, but only if, he either—

(a) has acquired such medical experience as may be prescribed; or

(b) is by virtue of regulations made under this subsection, being regulations analogous to those made under section 22, exempt from the need to have acquired that experience,

and "medical experience" includes hospital experience in any speciality.

(3) Subsections (2) and (3) of section 22 apply in relation to regulations under subsection (2) above as they apply in relation to regulations under that section except that, for that purpose, the reference in subsection (2) of that section to the "prescribed experience" shall be construed as a reference to the medical experience prescribed by virtue of paragraph (a) of subsection (2) above.".

(2) After section 24A of that Act there is inserted—

"**24B Supplementary lists**

(1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to assist in the provision of general medical services.

(2) Such a list is in this Act referred to as a "supplementary list".

(3) A medical practitioner whose name is not included in the Board's medical list or services list may not assist in the provision of general medical services in the Board's area unless his name is included in the Board's supplementary list.

(4) The regulations may (either or both)—

(a) make provision for the application (with such modifications as the Scottish Ministers think fit) to supplementary lists or to persons who are, have been or seek to be included in a supplementary list, of;

(b) in relation to such lists and persons, make provision analogous to any provision made by,

any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.

24C Application for inclusion in supplementary list

(1) No medical practitioner—

(a) who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in a Health Board's supplementary list unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for him to assist in the provision of general medical services in the Board's area; or

(b) shall be so entitled unless he is suitably experienced.

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(2) For the purposes of subsection (1)(b) a medical practitioner is "suitably experienced" if, but only if, he either—

(a) has acquired such medical experience as may be prescribed; or

(b) is by virtue of regulations made under this subsection, being regulations analogous to those made under section 22, exempt from the need to have acquired that experience,

and "medical experience" includes hospital experience in any speciality.

(3) Subsections (2) and (3) of section 22 apply in relation to regulations under subsection (2) above as they apply in relation to regulations under that section except that, for that purpose, the reference in subsection (2) of that section to the "prescribed experience" shall be construed as a reference to the medical experience prescribed by virtue of paragraph (a) of subsection (2) above.".

19 Representations against preferential treatment

In Schedule 1 to the National Health Service (Primary Care) Act 1997 (c.46) (which applies in certain circumstances where a determination is made that a medical practitioner is to be given preferential treatment on making an application to be included in a Health Board's medical list after ceasing to perform personal medical services in connection with the provision of such services under a pilot scheme), both—

(a) in paragraph 3(1), at the end; and

(b) in paragraph 4(1), after the word "area",

there is added "or that the applicant meets the second condition for disqualification mentioned in section 29 of the 1978 Act".

Miscellaneous

20 Amendment of Road Traffic Act 1988 and Road Traffic (NHS Charges) Act 1999: payment for treatment of traffic casualties

(1) In section 157(1)(a) of the Road Traffic Act 1988 (c.52) (payment for hospital treatment of traffic casualties), for the words "in a place to which the public have a right of access" there is substituted " in some other public place ".

(2) In section 158(1)(a) of that Act (payment for emergency treatment of traffic casualties), after the word "road" there is inserted " or in some other public place ".

(3) In section 1(1)(a) of the Road Traffic (NHS Charges) Act 1999 (c.3) (payment for hospital treatment of traffic casualties), after the word "road" there is inserted " or in some other public place ".

21 Amendment of 1978 Act: schemes for meeting losses and liabilities etc. of certain health bodies

In section 85B(2) of the 1978 Act (bodies in respect of which schemes for meeting losses and liabilities may be made)—

(a) the word "and" which immediately follows paragraph (d) is repealed; and

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(b) after paragraph (e), there is inserted—

"; and

(f) the Mental Welfare Commission for Scotland".

PART 4

GENERAL

22 Interpretation

(1) In this Act—

"the 1948 Act" means the National Assistance Act 1948 (c.29);

"the 1968 Act" means the Social Work (Scotland) Act 1968 (c.49);

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c.29);

"the 1984 Act" means the Mental Health (Scotland) Act 1984 (c.36);

"the 1995 Act" means the Children (Scotland) Act 1995 (c.36);

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

"NHS body" means—

(a) a Health Board, constituted by order made under section 2(1)(a) of the 1978 Act;

(b) a Special Health Board, constituted by order made under section 2(1)(b) of that Act;

(c) a National Health Service trust, established by order made under section 12A(1) of that Act; or

(d) the Common Services Agency, constituted by section 10(1) of that Act;

"prescribed" means prescribed by regulations made by the Scottish Ministers; and

"social care" means, subject to subsection (2) below, a service provided—

(a) under the 1968 Act; or

(b) under section 7 (arrangements in relation to persons who are or have been suffering from mental disorder) or 8 (provision of after-care services for such persons) of the 1984 Act,

to an individual by a local authority or a service the provision of which to an individual, under the 1968 Act or either of those sections, is secured by a local authority.

(2) In this Act, "social care" does not include a service which (or so much of a service as) consists of the provision of accommodation; but in the definition of the expression in subsection (1) above, the references to a service being provided are to the provision of any other form of assistance (including, without prejudice to that generality, the provision of advice, guidance or a material thing).

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23 Regulations

(1) Any order under this Act is to be made by statutory instrument; and a statutory instrument containing any such order, other than an order under section 1(2)(b) or 27(2) of this Act, is subject to annulment in pursuance of a resolution of the Parliament.

(2) A statutory instrument containing an order under section 1(2)(b) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(3) Any regulations under this Act are to be made by statutory instrument; and a statutory instrument containing—

(a) regulations under section 1 or 2 of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;

(b) regulations under any other provision of this Act is subject to annulment in pursuance of a resolution of the Parliament.

(4) Any such order or regulations may make different provision for different cases, for different services and for different persons.

24 Transitional provisions etc.

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act or of any order or regulations made under this Act.

(2) An order under subsection (1) above may amend or repeal any enactment (including any provision of this Act).

25 Minor and consequential amendments and repeals

Schedule 2 to this Act, which contains minor amendments and repeals and amendments and repeals consequential on the provisions of this Act, has effect.

Commencement Information

I2 S. 25 wholly in force at 1.6.2003; s. 25 not in force at Royal Assent see s. 27(2); s. 25 in force for specified purposes at 1.4.2002 by S.S.I. 2002/170, **art. 2(1)**; s. 25 in force for further specified purposes at 1.7.2002 by S.S.I. 2002/170, **art. 2(3)**; s. 25 in force for further specified purposes at 1.6.2003 by S.S.I. 2002/170, **art. 2(5)**

26 Guidance and directions

Without prejudice to—

(a) section 5 of the 1968 Act (functions of Scottish Ministers);

(b) sections 2 (Health Boards), 10 (Common Services Agency) and 12A (National Health Service trusts) of, and paragraph 6 of Schedule 7A to, the 1978 Act; and

(c) sections 5(1)(b), 6(1), (2)(b)(ii) and (4) and 17(1) and (5) of this Act,

the Scottish Ministers may issue relevant guidance and directions to local authorities and NHS bodies (that is to say such guidance and directions as appear to the Scottish

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Ministers to be requisite in relation to, or in consequence of, the provisions of this Act) as to the exercise by those authorities and bodies of any function.

27 Short title and commencement

(1) This Act may be cited as the Community Care and Health (Scotland) Act 2002.

(2) This Act, except this section and section 23, comes into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

Subordinate Legislation Made

P1 S. 27(2) power fully exercised: different dates appointed for specified provisions by S.S.I. 2002/170, **art. 2**

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