

*These notes relate to the Community Care and Health (Scotland) Act 2002 (asp 5) which received Royal Assent on 12 March 2002*

# COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

3. The Act takes forward a number of the Scottish Executive's recent policy commitments on the care of people in Scotland. In particular, these commitments were made in:
  - *The Scottish Executive's Response to the Royal Commission on Long Term Care* (October 2000);
  - *The Scottish Executive's Response to the Report of the Joint Future Group* (January 2001);
  - *The Response by the Scottish Executive to the Health and Community Care Committee's Inquiry into the Delivery of Community Care* (January 2001);
  - the Executive's acceptance of the findings of the *Report of the Chief Nursing Officer for Scotland's Group on Free Nursing Care* (December 2000);
  - the Executive's *Strategy for Carers in Scotland* (November 1999); and
  - the Executive's decisions in response to the *Report of the Scottish Carers Legislation Working Group* (January 2001).
4. The Scottish Ministers consulted on their proposals in a number of ways, feedback from which informed the development of the provisions contained in the Act. The Executive published three separate documents for consultation:
  - *Better Care for all our futures* (April 2001)
  - *Carers' Legislation Consultation Paper* (April 2001)
  - *Supplementary Medical Lists for Non-principal General Practitioners* (June 2001)
5. Ministers also established the Care Development Group, a group of experts in the care of older people, which consulted as part of its remit to make recommendations on the implementation, costs and "cross-border" issues of providing free nursing and personal care for all Scotland's older people. The Group published its report, *Fair Care for Older People*, in September 2001.
6. In summary, the Act:
  - enables implementation of free nursing care (in care homes which provide nursing);
  - enables implementation of free personal and other care;
  - enables regulation of charging for non-residential social care;

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- enables both residents and third parties to make additional payments towards care home fees so that the resident can enter more expensive accommodation than that which the local authority would normally pay for;
- enables provision of care home places in other parts of the UK;
- enables deferred payment agreements to be entered into so that residents may defer payment of all or part of their care home fees due to the local authority so that they do not need to sell their home in their lifetime;
- provides for expansion of access to direct payments for non-residential service users, giving people the ability to purchase their own services;
- provides for an extended right to assessment for informal carers, including young carers, and arrangements to ensure that carers are made aware of this right;
- enables the contribution of carers and their views, as well as the views of the cared for person, to be taken into account by local authorities before deciding on the services to be provided to the cared-for person;
- enables expansion of joint resourcing and management of services relevant to health and community care between NHS Scotland and local authorities;
- enables Ministers to require joint working where they feel services are failing;
- enables extension of the medical list system to cover all GPs working in NHS Scotland;
- provides for extension of the jurisdiction of the NHS Tribunal to enable it to disqualify from the medical list, on grounds of fraud, providers of personal medical services under pilot schemes seeking preferential consideration to return to that list;
- provides for extension of the provisions which enable the recovery from third party insurers of expenses incurred by the NHS in treating casualties of motor vehicle accidents which occur on a road to now include other public places such as a car park; and
- provides for inclusion of the Mental Welfare Commission as a member of the Clinical Negligence and Other Risks Indemnity Scheme.