

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 1 – Community Care

Carers

Section 8 – Amendment of 1968 Act: matters to be taken account of in assessment of needs

45. **Section 8** replaces section 12A(1)(b) of the 1968 Act and adds two conditions into the existing process through which local authorities assess and provide services for adults in need of community care services. It requires local authorities after having assessed the needs of a person for community care services but before deciding what services to provide to the cared-for person to take into account, as far as is reasonable and practicable:
- the care being provided by a carer; and
 - the views of both the carer and the cared-for person.

Section 9 - Amendment of 1968 Act: assessment of ability to provide care etc.

46. Under section 12A of the 1968 Act a local authority is required, if requested by a carer of an adult, to carry out an assessment of the carer's ability to care only if the authority at that time is also assessing the needs of the cared-for person for community care services. "Community care services" are defined in section 5A(4) of the 1968 Act.
47. **Section 9** of the Act amends and adds to these provisions, and gives carers of adults an independent right to request assessment that does not depend on whether the authority is also assessing the needs of the cared-for adult. This applies to all carers irrespective of their age.
48. At present, a local authority must have regard to the results of the assessment of a carer when deciding what services should be provided to the cared-for person. A local authority may also give a carer assistance directly in the form of information or advice, or by supporting organisations which help carers. Where carers have needs in their own right due to their own health or other circumstances, a local authority may assess the carer for community care services under section 12A of the 1968 Act, and may provide any necessary support in the form of community care services. The changes made by section 9 which extend the circumstances in which carers may request an assessment do not affect the courses of action open to a local authority following that assessment, namely to provide support to carers directly, or through the services it provides to the cared-for person.
49. **Section 9** of the Act also introduces a new section 12AB to the 1968 Act, requiring local authorities to provide certain information to carers that the authorities are aware of who

are providing, or intending to provide, a substantial amount of care on a regular basis for someone over 18. Local authorities should notify such carers that they may be entitled to an independent assessment of their ability to provide care, under section 12AA of the 1968 Act.

Section 10 – Amendment of the 1995 Act: matters to be taken into account in assessment of needs of child affected by disability

50. **Section 10** inserts a new subsection (4) into section 23 of the 1995 Act adding conditions similar to those mentioned at paragraph 45 above, in relation to section 8, into the existing process through which local authorities assess and provide services for children affected by disability.

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

51. Similar to section 12A mentioned above, under section 24 of the 1995 Act a local authority's duty, if requested by a carer of a disabled child, to carry out an assessment of the carer's ability to care applies only where the authority at that time is assessing the needs of the cared-for child for children's services. Children's services are those provided under section 22 of the 1995 Act. The amendment made by section 11 gives carers an independent right to request an assessment that does not depend upon whether the authority is also assessing the needs of the cared-for child. Section 11 also introduces a similar obligation to that referred to in paragraph 49 above on local authorities in respect of carers of disabled children by inserting a new section 24A to the 1995 Act.

Section 12 – Carer information strategies

52. **Section 12** of the Act provides a power for the Scottish Ministers to require Health Boards to prepare and submit to Ministers a strategy for providing certain information to carers who appear to the Board to be providing or intending to provide a substantial amount of care on a regular basis. The strategy should be for informing such carers that they may be entitled to an independent assessment of their ability to care under section 12AA of the 1968 Act, or section 24 of the 1995 Act. Ministers may specify the form and extent of a Health Board's strategy. Section 12 also requires that a Health Board's carer information strategy should be available free of charge to any person who asks for it.