



# Community Care and Health (Scotland) Act 2002

2002 asp 5

## PART 1

### COMMUNITY CARE

#### *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.”.

#### **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1968 Act (duty of local authority to assess needs of adults for community care services), subsections (3A) to (3C) are repealed.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—

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*Status: Point in time view as at 01/09/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Community Care and Health (Scotland) Act 2002, Cross Heading: Carers. (See end of Document for details)*

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### **“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, 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.”.

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**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.”.

(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—

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- (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”.

**Status:**

Point in time view as at 01/09/2002.

**Changes to legislation:**

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