



# Community Care and Health (Scotland) Act 2002

2002 asp 5

## PART 1

### COMMUNITY CARE

#### *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

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*Status: This is the original version (as it was originally enacted).*

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- (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 exercisable” 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 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;”;
- (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.”.