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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 304**

**SOCIAL CARE**

**The Community Care (Assessment of Needs) (Scotland) Regulations 2002**

*Made* - - - - - *20th June 2002*  
*Coming into force* - - - - - *1st July 2002*

The Scottish Ministers, in exercise of the power conferred by section 1(7) of the Community Care and Health (Scotland) Act 2002<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 23(3)(a) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Community Care (Assessment of Needs) (Scotland) Regulations 2002 and shall come into force on 1st July 2002.

(2) In these Regulations, except where the context otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968<sup>(2)</sup>;

“the Act” means the Community Care and Health (Scotland) Act 2002;

“care” means care of a kind mentioned in paragraphs (a) to (d) of section 1(1) of the Act;

“care home service” has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001<sup>(3)</sup>;

“relevant person” means a person mentioned in section 12A(1) of the 1968 Act who—

- (i) is in receipt of a care home service, provided or secured otherwise than by a local authority, including the provision of care and who was in receipt of that service immediately before 1st April 2002,
- (ii) has made a request (or on whose behalf a request has been made) before 1st July 2003 to the local authority for it to provide or secure provision of care to them, and
- (iii) in the case of a person in receipt of care which consists only of care of a kind mentioned in paragraphs (a), (b) or (c) of section 1(1) of the Act, is aged 65 or over.

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(1) 2002 asp 5.  
(2) 1968 c. 49.  
(3) 2001 asp 8

**Transitional arrangement for those receiving a care home service**

2.—(1) Section 12A(1) and (2) of the 1968 Act is modified in accordance with the following paragraphs of this regulation.

(2) A local authority shall treat a relevant person as being a person who, for the purposes of section 12A(1) of the 1968 Act, may be in need of services and the duty of a local authority to make an assessment under paragraph (a) of that subsection shall not apply in respect of such a person.

(3) On the making of the request referred to in the definition of “relevant person” in regulation 1(2) and where a local authority does not intend to make an assessment of that kind, the local authority shall decide that, pending any assessment that the local authority may later make, the needs of that person call for the provision of services and it shall regard that person as being in need of such care as the person is receiving from the care home service.

(4) Where a local authority does not make an assessment before making a decision concerning the needs of a relevant person it may make a decision under section 12A(2) of the 1968 Act without consulting a medical practitioner.

St Andrew’s House,  
Edinburgh  
20th June 2002

*FRANCIS McAVEETY*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note does not form part of the Regulations)*

These Regulations are made under the Community Care and Health (Scotland) Act 2002 (“the Act”). Regulation 2 makes transitional provisions modifying section 12A(1) and (2) of the 1968 Act (regulation 2(1)). By regulation 2(2), a local authority shall regard a relevant person (as defined in regulation 1(2)) as being a person in need of services and the duty to carry out an assessment under section 12A(1)(a) of the 1968 Act shall not apply. Paragraph (3) provides that a local authority, where it does not intend to exercise its power to assess needs, shall, on receipt of a request, decide that the person has needs that call for the provision of a service and those needs shall be treated as such care as the person is receiving from the care home service. Paragraph (4) applies where a local authority does not make an assessment. In such a case, it relieves the local authority of the duty to consult a medical practitioner in accordance with section 12A(2) of the 1968 Act when deciding whether the needs of a person call for the provision of nursing care.

A “relevant person” is defined as a person who is receiving a care home service, including the provision of care, who received that service immediately before 1st April 2002, who before 1st July 2003 requests the local authority to provide or secure provision of care and, in the case of a person receiving only personal care, personal support or care of a kind mentioned in schedule 1 to the Act, is aged 65 or over (regulation 1(2)).