

2002 No. 264

SOCIAL CARE

The Community Care (Disregard of Resources) (Scotland) Order 2002

Made 5th June 2002

Laid before the Scottish Parliament 6th June 2002

Coming into force 1st July 2002

The Scottish Ministers, in exercise of the powers conferred by sections 12(3A) and (3B) and 94(1) of the Social Work (Scotland) Act 1968(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Care (Disregard of Resources) (Scotland) Order 2002 and shall come into force on 1st July 2002.

(2) In this Order—

“the 1948 Act” means the National Assistance Act 1948(b);

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

“the Act” means the Social Work (Scotland) Act 1968;

“the Assessment Regulations” means the National Assistance (Assessment of Resources) Regulations 1992(d);

“deferred payment agreement” has the meaning given by section 6 of the 2002 Act (deferred payment of accommodation costs);

“social care” has the meaning given by section 22 of the 2002 Act (interpretation).

Disregarding of resources

2.—(1) In making a determination referred to in section 12(3A) of the Act (disregarding of resources when determining whether to make available assistance) a local authority shall, where the service referred to in that section—

(a) includes social care of a kind mentioned in section 1(1)(d) of the 2002 Act (charging and not charging for social care); or

(a) 1968 c.49; section 12(3A) and (3B) were inserted by the Community Care (Residential Accommodation) Act 1998 (c.19), section 2 and substituted by the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), section 3; section 94(1) was amended by the Children and Young Persons Act 1969 (c.54), Schedule 5, by the Children Act 1975 (c.72), Schedule 4, Part I, by the National Health Service (Scotland) Act 1978 (c.29), Schedule 16, paragraph 29(3), by the Mental Health (Scotland) Act 1984 (c.36), Schedule 3, paragraph 17, by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 10(14), by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(28) and Schedule 5 and by the 2002 Act, schedule 2, paragraph 1(5). See the definition of “prescribed”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1948 c.29.

(c) 2002 asp 5.

(d) S.I. 1992/2977 was amended by S.I. 1993/964 and 2230, 1994/825, 1995/858 and 3054, 1996/602, 1997/485, 1998/497 and 1730 and S.S.I. 2001/6 and 138.

(b) does not include social care of that kind but includes social care of a kind mentioned in section 1(1)(a), (b) or (c) of the 2002 Act (charging and not charging for social care) and the person is a person aged 65 or over, disregard entirely the resources of the person for whom such services are to be provided or secured.

(2) Where paragraph (1) of this article does not apply and where a local authority proposes to enter into a deferred payment agreement, the person's resources prescribed for the purpose of section 12(3A) of the Act are so much of the person's capital as does not exceed the sum first mentioned in regulation 28(1) of the Assessment Regulations (calculation of tariff income from capital).

(3) Where neither paragraphs (1) nor (2) of this article apply, the person's resources prescribed for the purpose of section 12(3A) of the Act are so much of the person's capital as does not exceed the capital limit for the purposes of section 22 of the 1948 Act (charges to be made for accommodation)(a).

(4) For the purposes of paragraphs (2) and (3) of this article and subject to paragraph (5)–

(a) a person's capital shall be calculated in accordance with the Assessment Regulations in the same way as if that person were a person for whom accommodation is proposed to be provided under the Act and whose ability to pay falls to be assessed for the purposes of section 22(3) of the 1948 Act; and

(b) "the capital limit" for the purposes of section 22 of the 1948 Act means the amount for the time being prescribed in regulation 20 of the Assessment Regulations.

(5) In a case where a local authority proposes to enter into a deferred payment agreement, when making the calculation specified in paragraph (4)(a) of this article the local authority shall give effect to paragraph 1A of Schedule 4 to the Assessment Regulations (capital to be disregarded)(b) as if that paragraph read–

"1A. In the case of a permanent resident, the value of any dwelling which that person would otherwise normally occupy as their only or main residence."

FRANCIS MCAVEETY

Authorised to sign by the Scottish Ministers

St. Andrew's House,
Edinburgh
5th June 2002

(a) Section 22 was modified by the Social Work (Scotland) Act 1968 (c.49) ("the 1968 Act"), section 87(3) and (4) and amended by the 1968 Act, Schedule 9, Part I, by the Housing (Homeless Persons) Act 1977 (c.48), section 20(4) and Schedule, by the Social Security Act 1980 (c.30), Schedule 4, paragraph 2(1) and Schedule 5 Part II, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 20(1)(a), by the Social Security Act 1986 (c.50), Schedule 10, paragraph 32(2) and by the National Health Service and Community Care Act 1990 (c.19), section 44 and Schedule 10.

(b) Paragraph 1A was inserted by S.S.I. 2001/138, regulation 5.

EXPLANATORY NOTE

(This note is not part of the Order)

The Community Care and Health (Scotland) Act 2002 (asp 5) amended section 12 of the Social Work (Scotland) Act 1968 (c.49) by substituting subsections (3A) and (3B). The new subsections provide that an order may specify so much of a person's resources as shall be disregarded by a local authority, or specify a way of calculating such resources as shall be disregarded, when deciding for the purposes of section 12 of the 1968 Act whether to make available assistance, by way of residential accommodation, to a person.

This Order specifies the resources that are to be disregarded for that purpose.

Where any person is to receive nursing care or a person aged 65 or over is to receive personal care, personal support or care of a kind mentioned in section 1(1)(c) of the 2002 Act, the entirety of that person's resources shall be disregarded (article 2(1)).

Where a person is not to receive such care but a local authority proposes to enter into a deferred payment agreement, the person's capital below the lower capital limit, being the amount first mentioned in regulation 28(1) of the National Assistance (Assessment of Resources) Regulations 1992 ("the Assessment Regulations") (S.I. 1992/2977), is to be disregarded (article 2(2)).

In any other case, the person's capital up to the capital limit as specified in regulation 20 of the Assessment Regulations is to be disregarded (article 2(3)).

The amount of capital shall be calculated in accordance with the Assessment Regulations (article 2(4)), subject to one exception, being that where a person is someone with whom the local authority proposes to enter into a deferred payment agreement, the local authority shall, in making that calculation, disregard that person's main or only home (article 2(5)).

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