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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 265**

**SOCIAL CARE**

**The Community Care (Additional Payments) (Scotland) Regulations 2002**

<i>Made</i>	- - - -	<i>5th June 2002</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th June 2002</i>
<i>Coming into force</i>	- -	<i>1st July 2002</i>

The Scottish Ministers, in exercise of the powers conferred by sections 4 and 23(4) 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:

**Citation, commencement and interpretation**

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

(2) In these Regulations—

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

“additional payments” means payments made for the purpose mentioned in section 4(2) of the Act (accommodation more expensive than usually provided);

“the Assessment Regulations” means the National Assistance (Assessment of Resources) Regulations 1992<sup>(2)</sup>;

“capital limit” means the amount for the time being prescribed in regulation 20 of the Assessment Regulations;

“qualifying resident” means a person who is in receipt of or is eligible for assistance from the local authority by the provision of accommodation;

“relevant accommodation” means accommodation suitable to meet the needs of the qualifying resident but in respect of which the cost of providing that accommodation to the resident would require the local authority to pay more than that authority would usually expect to pay in

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(1) 2002 asp 5.

(2) 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.

order to provide accommodation under the 1968 Act<sup>(3)</sup> or under section 7 of the 1984 Act<sup>(4)</sup> (functions of local authorities) suitable for a person with the needs of the qualifying resident; “resources” means the whole of the income and capital of a qualifying resident.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

### **Additional payments**

2.—(1) A local authority shall, in the circumstances set out in paragraph (2) and unless prejudice is caused to any obligation of the authority to provide accommodation for any other person, provide or secure provision of relevant accommodation to a qualifying resident who has requested the authority to provide to, or secure provision for, the resident of that accommodation.

(2) The circumstances referred to in paragraph (1) are—

- (a) the resident has requested the local authority to provide to or secure provision for the resident of accommodation which does not consist only of care of a kind mentioned in section 1(1) of the Act (charging and not charging for social care);
- (b) the relevant accommodation requested by the resident is available;
- (c) where the relevant accommodation is to be secured, it will be secured on the local authority’s usual terms and conditions (except as to price) for securing accommodation of that kind; and
- (d) that (either or both)—
  - (i) a third party agrees to make the additional payments,
  - (ii) a qualifying resident, to whom paragraph (3) applies, agrees to make the additional payments from that part or combination of parts of their resources as are referred to in regulation 3,

and each person who has made such an agreement can, in the opinion of the local authority, reasonably be expected to make the additional payments for the duration of the arrangements.

(3) This paragraph applies to a qualifying resident—

- (a) to whom paragraph 1A of Schedule 4 to the Assessment Regulations (the twelve week property disregard) applies;
- (b) who has entered into, or agreed to enter into, a deferred payment agreement with the local authority, as provided for in section 6 of the Act (deferred payment of accommodation costs), or
- (c) who, as a result of not being charged for social care in accordance with section 1(1) of the Act (charging and not charging for social care), is required to pay less for their accommodation than that person would have been required to pay had that section not applied to such care.

### **Resources**

3. The parts of resources referred to in regulation 2(2)(d)(ii) are—

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(3) 1968 c. 49.

(4) 1984 c. 36; section 7 was amended by the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#), schedule 6.

- (a) any income or capital disregarded under Schedule 2, 3 or 4 of the Assessment Regulations, except capital disregarded under paragraphs 1, 1A, 2, 3, 7, or 18 of Schedule 4 (capital to be disregarded) to those Regulations;
- (b) in the case of a qualifying resident to whom regulation 2(3)(a) applies, capital exceeding the sum first mentioned in regulation 28(1) of the Assessment Regulations;
- (c) in the case of a qualifying resident to whom regulation 2(3)(b) applies and where the agreement referred to in that regulation includes the deferred payment of additional payments, the dwelling which that person would otherwise normally occupy as their only or main residence where the value of that resident's interest in that property together with any other capital of the resident exceeds the capital limit, provided that where additional payments are to be made from the value of that property they will form part of the relevant contributions under the deferred payment agreement; and
- (d) in the case of a qualifying resident to whom regulation 2(3)(b) does not apply but to whom regulation 2(3)(c) applies, either—
  - (i) capital exceeding the capital limit; or
  - (ii) the difference between the weekly amount that the person is, as a result of not being charged for social care in accordance with section 1(1) of the Act (charging and not charging for social care), required to pay for the cost of their accommodation and the amount which that person would have been required to pay had that section not applied to such care.

St Andrew's House,  
Edinburgh  
5th June 2002

*FRANCIS MCAVEETY*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for additional payments to be made so that a person who is in receipt of or is eligible for residential accommodation can choose to live in accommodation which is more expensive than the local authority would usually pay for someone with that person's assessed needs.

Under these Regulations, where such a person requests more expensive accommodation, the local authority is required to provide that where additional payments are agreed to be made and no prejudice is caused to any obligation of the local authority to provide accommodation for any other person (regulation 2). Additional payments may be made where the person has requested accommodation which is not just personal or other care or nursing care, where the accommodation is available and, where it is to be secured, it will be secured on the local authority's usual terms and conditions for securing accommodation of that kind. The additional payments may be made by a third party. In certain circumstances, that is when the 12 week property disregard applies or where there is a deferred payment agreement between the resident and the local authority, or where the person is benefiting from the receipt of social care for which no charge is made by the local authority, the resident may contribute any or all of the additional payments, from specified parts of their resources (regulation 2(2) and (3)).

The part or parts of their resources from which a resident may make additional payments are set out in regulation 3. They are income or capital disregarded under Schedule 2, 3 and 4 to the National Assistance (Assessment of Resources) Regulations 1992 (S.I.1992/2977) ("the Assessment Regulations"), except capital disregarded under paragraph 1, 1A, 2, 3, 7 or 18 of Schedule 4 to those regulations (the person's home and certain capital related thereto) together with additional resources dependent upon certain factors. If they are a person to whom the 12 week property disregard applies, they may also use capital exceeding the amount first appearing in regulation 28 of the Assessment Regulations (currently £11,500). If they are a person who has or will have a deferred payment agreement including additional payments, they may also use the capital value of their home where that and other capital exceeds the capital limit set out in regulation 20 of the Assessment Regulations ("upper capital limit") (currently £18,500). If they are a person who benefits financially from not having to pay for personal or other care or nursing care, they may also use any capital above the upper capital limit and the difference between the amount that they would have had to pay to the local authority if that care was subject to a charge and the amount that they have to pay where no charge is made for that care.