



# Community Care and Health (Scotland) Act 2002

2002 asp 5

**S**

An Act of the Scottish Parliament to make further provision as respects social care; to make provision in relation to arrangements and payments between National Health Service bodies and local authorities as respects certain of their functions; to amend the law relating to the National Health Service; and for connected purposes.

## **PART 1 S**

### COMMUNITY CARE

#### *Charging and not charging for social care*

#### **1 Regulations as respects charging and not charging for social care S**

- (1) Subject to subsection (2)(a) below, a local authority are not to charge for social care provided by them (or the provision of which is secured by them) if that social care is—
  - (a) personal care as defined in [F1paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8);
  - (b) personal support as so defined;
  - (c) whether or not such personal care or personal support, care of a kind for the time being mentioned in schedule 1 to this Act; or
  - (d) whether or not from a registered nurse, nursing care.
- (2) The Scottish Ministers may (either or both)—
  - (a) by regulations qualify the requirements of subsection (1) above in such way as they think fit;
  - (b) by order amend schedule 1 to this Act.
- (3) In paragraph (d) of subsection (1) above, “nursing care” does not include such social care as falls within any of paragraphs (a) to (c) of that subsection.
- (4) Subject to subsection (1) above, the Scottish Ministers may by regulations—

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- (a) require a local authority—
    - (i) to charge; or
    - (ii) not to charge,
 for such social care provided by (or the provision of which is secured by) the authority as may be specified in the regulations;
  - (b) where a requirement is made under paragraph (a)(i) above, specify the amount to be charged or factors which the authority must (either or both)—
    - (i) take into account;
    - (ii) not take into account,
 in determining any such amount; and
  - (c) where a requirement is made under paragraph (a)(ii) above, qualify that requirement in such way as they think fit.
- (5) Regulations under subsection (4) above may—
- (a) specify, as a factor which the authority must take into account by virtue of paragraph (b) of that subsection, the maximum amount which may be charged for the social care in question or for that and such other social care (being social care provided to the same person by the authority) as may be specified in the regulations; or
  - (b) provide that a person who, in such manner and by reference to such factors as may be specified in the regulations, is assessed by the authority as unable to pay the amount falling to be charged by virtue of that paragraph is required to pay only so much as appears from the assessment to be reasonably practicable for that person.
- (6) In section 87 of the 1968 Act (charges that may be made for services and accommodation), after subsection (1A) there is inserted the following subsection—
- “(1B) Subsections (1) and (1A) above do not apply as respects any amount required not to be charged by subsection (1) of section 1 of the Community Care and Health (Scotland) Act 2002 (asp 5) (charging and not charging for social care) or required to be charged or not to be charged by virtue of subsection (4) of that section.”.
- (7) Regulations under this section may make such transitional provision as the Scottish Ministers consider necessary or expedient, modifying either or both of subsections (1) and (2) of section 12A of the 1968 Act (duty of local authority to assess needs of certain persons for community care services) in their application to persons who, immediately before the date of coming into force of this <sup>F2</sup>subsection], were receiving such services in residential accommodation and for whom the local authority were not, at that time, providing or securing the provision either of the services or the accommodation.

#### Textual Amendments

- F1** Words in s. 1(1)(a) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 1 para. 10\(a\)](#)
- F2** Word in s. 1(7) substituted (7.6.2002) by [S.S.I. 2002/233](#), [art. 2](#)

#### Modifications etc. (not altering text)

- C1** S. 1(1) restricted (1.7.2002) by [S.S.I. 2002/303](#), [art. 3](#)

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### Commencement Information

- II** S. 1 wholly in force at 1.7.2002; s. 1 not in force at Royal Assent see s. 27(2); s. 1(2)(7) in force at 1.4.2002 by [S.S.I. 2002/170, art. 2\(1\)](#); s. 1(1)(3)-(6) in force at 1.7.2002 by [S.S.I. 2002/170, art. 2\(3\)](#)

## Accommodation

### 2 Accommodation provided under 1968 Act etc. **S**

For the purposes of the definition of “social care” in section 22(1) and (2) of this Act, of sections 22 (charges to be made for accommodation), 26 (provision of accommodation in premises maintained by voluntary organisations) and 65 (general provisions as to application to Scotland) of the 1948 Act and of <sup>F3</sup>sections 86 and 87(2) ] and (3) (charges that may be made for accommodation) of the 1968 Act, the Scottish Ministers may by regulations determine what is and what is not to be regarded as accommodation provided under the 1968 Act or under <sup>F4</sup>section 25 of the 2003 Act (provision of care and support services etc. for ] persons who are or have been suffering from mental disorder).

### Textual Amendments

- F3** Words in s. 2 substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\), ss. 65\(2\), 79\(3\)](#); [S.S.I. 2007/334, art. 2\(b\), sch. 2](#)
- F4** Words in s. 2 substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\), ss. 28\(2\)\(a\), 333\(2\)](#); [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375, art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459, art. 2](#))

### 3 Disregarding of resources when determining whether to make available assistance by providing residential accommodation **S**

In section 12 of the 1968 Act (general social welfare services of local authorities), for subsections (3A) and (3B) there is substituted—

“(3A) In determining, for the purposes of this section, whether to make available assistance by providing, or securing the provision of, residential accommodation to a person, a local authority shall disregard so much of the person’s resources—

(a) as may be prescribed; or

(b) as is determined by them in such a way as may be prescribed,

and any order made by virtue of this subsection may make different provision for different cases and for different persons.

(3B) An order made by virtue of paragraph (a) of subsection (3A) of this section may prescribe circumstances in which assistance such as is mentioned in that subsection is to be made available disregarding entirely a person’s resources.

(3C) In subsections (3A) and (3B) of this section, references to a person’s resources are to resources within the meaning of the order prescribing the amount, or as the case may be the way, in question.

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(3D) A statutory instrument made in exercise of the power conferred by paragraph (a) or (b) of subsection (3A) of this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

#### 4 Accommodation more expensive than usually provided **S**

- (1) The Scottish Ministers may by regulations make provision, in relation to accommodation provided under the 1968 Act or under [F5section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder) ], for and in connection with the making of additional payments—
- (a) by persons for whom the accommodation is provided (in this section referred to as “residents”); or
  - (b) by other persons, F6....
- (2) In subsection (1) above “additional payments”, in relation to a resident, means payments which—
- (a) are made for the purpose of meeting all or part of the difference between the actual cost of the accommodation and the amount that the local authority providing it would usually expect to pay in order to provide accommodation suitable for a person with the assessed needs of the resident; and
  - (b) if they are made by the resident, are made out of such of that person’s resources as are specified in, or determined in accordance with, the regulations in question.
- (3) Such regulations are, for the purposes of subsection (2) above, to define the expression “resources”.

#### Textual Amendments

- F5** Words in s. 4(1) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 12\(2\)](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F6** Words in s. 4(1)(b) repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 62\(3\)](#), 79(3); S.S.I. 2007/334, art. 2(b), [sch. 2](#)

VALID FROM 11/05/2015

#### 5 Local authority arrangements for residential accommodation outwith Scotland **S**

- (1) In fulfilment of their duty under section 12(1) (arranging for provision of residential accommodation, etc.) or 13A(1) (arranging for provision of residential accommodation with nursing) of the 1968 Act [F7or under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support) ], a local authority—
- (a) may, in accordance with regulations made by the Scottish Ministers; and
  - (b) must, if and to such extent as the Scottish Ministers so direct, in accordance with such regulations and with that direction,

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make arrangements for the provision of residential accommodation in an appropriate establishment in England and Wales, or in Northern Ireland, any of the Channel Islands or the Isle of Man.

- (2) Regulations under subsection (1) above may, subject to subsection (4) below, modify any of the provisions of the 1968 Act in their application to [<sup>F8</sup>persons for whom such arrangements are made ] .
- (3) Arrangements made, before the date on which this section comes into force, by a local authority under section 12(1) of the 1968 Act for the provision of residential accommodation in an appropriate establishment (whether or not the establishment was an appropriate establishment when the arrangements were made) are deemed to have been made by virtue of paragraph (a) of subsection (1) above.
- (4) Subsection (2) of section 13A of the 1968 Act does not apply in relation to arrangements made under subsection (1) above and subsection (3) of that section does not apply in relation to premises where accommodation is provided by virtue of subsection (1) above.
- [<sup>F9</sup>(5) In subsections (1) and (3) above, “appropriate establishment” means an establishment of such description or conforming to such requirements as may be specified in regulations under subsection (1).]

#### Textual Amendments

- F7** Words in s. 5(1) inserted (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(a)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)
- F8** Words in s. 5(2) substituted (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(b)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)
- F9** S. 5(5) substituted for s. 5(5)(6) (1.10.2014) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 3(4)(c)** (with Sch. 1 paras. 8, 14); S.I. 2014/2473, art. 2(2)

## 6 Deferred payment of accommodation costs **S**

- (1) Where—
- a local authority are providing, or have secured the provision of, residential accommodation for a person under the 1968 Act or [<sup>F10</sup>section 25 of the 2003 Act (provision of care and support services for persons who have or have had a mental disorder)] , or are proposing to make or secure such provision; and
  - that person is or would be liable, by virtue of section 87(3) of the 1968 Act (charges that may be made for accommodation) or section 4 of this Act, to make any payment to the authority in respect of the accommodation,
- the authority may, in accordance with regulations made by the Scottish Ministers, and must, if the Scottish Ministers so direct, in accordance with such regulations and with that direction, enter into a deferred payment agreement with the person.
- (2) A “deferred payment agreement” is an agreement which provides—
- that payment of the portion mentioned in subsection (3) below (the “relevant portion”) of all or certain payments for which the person is, or would be, liable as mentioned in subsection (1)(b) above from a date specified in the agreement (which may be earlier than the date on which the agreement takes effect) will be deferred until, and become due on whichever is the earlier of—

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- (i) the expiry of 56 days after the date of death of the person; or
  - (ii) such date as may be specified in a written notice of termination of the agreement given to the authority by that person in accordance with the agreement;
  - (b) that—
    - (i) no interest will accrue in respect of the relevant portion while payment of that portion is deferred; but
    - (ii) interest will accrue in respect of the relevant portion from the earlier of the dates mentioned in sub-paragraphs (i) and (ii) of paragraph (a) above, until the date payment of that portion is made, the rate being such as may be determined by the authority in accordance with directions given to them by the Scottish Ministers;
  - (c) that the person will grant in favour of the authority a standard security for the purpose of securing the payment to them of such amounts as the authority determine are a reasonable estimate of—
    - (i) the relevant portion of payments deferred as mentioned in paragraph (a) above until the expiry of the time mentioned in sub-paragraph (i) of that paragraph; and
    - (ii) the amount of interest on that portion which might accrue thereafter in accordance with paragraph (b)(ii) above; and
  - (d) for such other matters as may be determined by the local authority.
- (3) The relevant portion is such portion of the payments as may be specified in, or determined in accordance with, the regulations.
- (4) Any determination by a local authority under subsection (2) above must accord with any directions given to them under this section by the Scottish Ministers.
- (5) Directions given by the Scottish Ministers under this section must be given to local authorities collectively.

**Textual Amendments**

**F10** Words in s. 6(1)(a) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 12\(3\)](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

*Direct payments*

**F117** **Direct payments** **S**

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**Textual Amendments**

**F11** S. 7 repealed (1.4.2014) by [The Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(Consequential and Saving Provisions\) Order 2014 \(S.S.I. 2014/90\)](#), art. 1, [sch. Pt. 1](#) (with art. 3)

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## Carers

### 8 **Amendment of 1968 Act: matters to be taken account of in assessment of needs** **S**

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.** **S**

(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—

#### “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

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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.”.

## **10 Amendment of 1995 Act: matters to be taken into account in assessment of needs of child affected by disability S**

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. S**

- (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—



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“(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—

- (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 **S**

(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

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- (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 [F12 paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8), of “a person who cares for”.

#### Textual Amendments

**F12** Words in s. 12(5) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 1 para. 10\(b\)](#)

## PART 2 **S**

### JOINT WORKING ETC.

#### 13 **Payments by NHS bodies towards certain local authority expenditure** **S**

- (1) An NHS body may, on such conditions as may be prescribed, after consulting the local authority in question, make payments to a local authority towards expenditure incurred, or to be incurred, by the authority in connection with the performance by them of such function of that authority as may be prescribed, being a function which, in the opinion of the body—
- (a) has an effect in relation to the health of individuals;
  - (b) has an effect in relation to, or is affected by, any function of that body; or
  - (c) is connected with any function of that body.
- (2) This section is without prejudice to section 16A of the 1978 Act (power to make payments towards expenditure on community services).

#### 14 **Payments by local authorities towards expenditure by NHS bodies on prescribed functions** **S**

A local authority may—

- (a) if, in their opinion, to do so would be likely to lead to an improvement in the way in which their functions are exercised; and
- (b) on such conditions as may be prescribed,

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make payments to an NHS body towards expenditure incurred, or to be incurred, by the body in connection with the performance by it of such of its functions as may be prescribed.

**F13 15 Delegation etc. between local authorities and NHS bodies** **S**

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**Textual Amendments**

**F13** Ss. 15-17 repealed (1.4.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), ss. 71(3), 72(2); S.S.I. 2014/231, art. 3

**Modifications etc. (not altering text)**

**C2** Ss. 15-17 continued (1.4.2015) by The Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), arts. 1(1), 3(2) (with art. 3(1))

**F13 16 Transfer of staff** **S**

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**Textual Amendments**

**F13** Ss. 15-17 repealed (1.4.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), ss. 71(3), 72(2); S.S.I. 2014/231, art. 3

**Modifications etc. (not altering text)**

**C2** Ss. 15-17 continued (1.4.2015) by The Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), arts. 1(1), 3(2) (with art. 3(1))

**F13 17 Scottish Ministers' power to require delegation etc. between local authorities and NHS bodies** **S**

.....

**Textual Amendments**

**F13** Ss. 15-17 repealed (1.4.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), ss. 71(3), 72(2); S.S.I. 2014/231, art. 3

**Modifications etc. (not altering text)**

**C2** Ss. 15-17 continued (1.4.2015) by The Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), arts. 1(1), 3(2) (with art. 3(1))

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## PART 3 **S**

### HEALTH

#### *Health Boards' lists*

#### <sup>F14</sup>18 Services lists and supplementary lists **S**

.....

##### Textual Amendments

- F14** S. 18 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), s. 9(1), **sch. para. 3(2)**; S.S.I. 2004/58, art. 2(3)

#### <sup>F15</sup>19 Representations against preferential treatment **S**

.....

##### Textual Amendments

- F15** S. 19 omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(a)**

##### Commencement Information

- I2** S. 19 in force at 4.3.2004 by S.S.I. 2004/33, **art. 2(1)(a)**

#### *Miscellaneous*

#### 20 Amendment of Road Traffic Act 1988 and Road Traffic (NHS Charges) Act 1999: payment for treatment of traffic casualties **S**

- (1) In section 157(1)(a) of the Road Traffic Act 1988 (c.52) (payment for hospital treatment of traffic casualties), for the words “in a place to which the public have a right of access” there is substituted “ in some other public place ”.
- (2) In section 158(1)(a) of that Act (payment for emergency treatment of traffic casualties), after the word “road” there is inserted “ or in some other public place ”.

<sup>F16</sup>(3) .....

##### Textual Amendments

- F16** S. 20(3) repealed (29.1.2007) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 14 Pt. 3**; S.S.I. 2007/10, art. 2(2)(g) (with art. 3)

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## 21 Amendment of 1978 Act: schemes for meeting losses and liabilities etc. of certain health bodies **S**

In section 85B(2) of the 1978 Act (bodies in respect of which schemes for meeting losses and liabilities may be made)—

- (a) the word “and” which immediately follows paragraph (d) is repealed; and
- (b) after paragraph (e), there is inserted—

“; and

- (f) the Mental Welfare Commission for Scotland”.

## PART 4 **S**

### GENERAL

## 22 Interpretation **S**

(1) In this Act—

“the 1948 Act” means the National Assistance Act 1948 (c.29);

“the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49);

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c.29);

<sup>F17</sup> ...

“the 1995 Act” means the Children (Scotland) Act 1995 (c.36);

[<sup>F18</sup>“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);]

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“NHS body” means—

- (a) a Health Board, constituted by order made under section 2(1)(a) of the 1978 Act;
- (b) a Special Health Board, constituted by order made under section 2(1)(b) of that Act;
- (c) a National Health Service trust, established by order made under section 12A(1) of that Act; <sup>F19</sup> ...
- (d) the Common Services Agency, constituted by section 10(1) of that Act; [<sup>F20</sup> or
- (e) Healthcare Improvement Scotland, established by section 10A(1) of that Act;]

“prescribed” means prescribed by regulations made by the Scottish Ministers; and

“social care” means, subject to subsection (2) below, a service provided—

- (a) under the 1968 Act; or
- (b) [<sup>F21</sup>under section 25 (care and support services for persons who have or have had a mental disorder), 26 (services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the 2003 Act]

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to an individual by a local authority or a service the provision of which to an individual, under the 1968 Act or [<sup>F22</sup> any ] of those sections, is secured by a local authority.

- (2) In this Act, “social care” does not include a service which (or so much of a service as) consists of the provision of accommodation; but in the definition of the expression in subsection (1) above, the references to a service being provided are to the provision of any other form of assistance (including, without prejudice to that generality, the provision of advice, guidance or a material thing).

#### Textual Amendments

- F17** Words in s. 22(1) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 28\(2\)\(b\)\(i\)](#), 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F18** Words in s. 22(1) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 28\(2\)\(b\)\(ii\)](#), 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F19** Word in s. 22(1) omitted (1.4.2011) by virtue of [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 2 para. 6\(a\)](#)
- F20** Words in s. 22(1) inserted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 2 para. 6\(b\)](#)
- F21** Words in s. 22(1) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 28\(2\)\(b\)\(iii\)](#), 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F22** Word in s. 22(1) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 28\(2\)\(b\)\(iv\)](#), 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

## 23 Regulations **S**

- (1) Any order under this Act is to be made by statutory instrument; and a statutory instrument containing any such order, other than an order under section 1(2)(b) or 27(2) of this Act, is subject to annulment in pursuance of a resolution of the Parliament.
- (2) A statutory instrument containing an order under section 1(2)(b) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.
- (3) Any regulations under this Act are to be made by statutory instrument; and a statutory instrument containing—
- regulations under section 1 or 2 of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;
  - regulations under any other provision of this Act is subject to annulment in pursuance of a resolution of the Parliament.
- (4) Any such order or regulations may make different provision for different cases, for different services and for different persons.

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## 24 Transitional provisions etc. **S**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act or of any order or regulations made under this Act.
- (2) An order under subsection (1) above may amend or repeal any enactment (including any provision of this Act).

## 25 Minor and consequential amendments and repeals **S**

Schedule 2 to this Act, which contains minor amendments and repeals and amendments and repeals consequential on the provisions of this Act, has effect.

### Commencement Information

- I3** S. 25 wholly in force at 1.6.2003; s. 25 not in force at Royal Assent see s. 27(2); s. 25 in force for specified purposes at 1.4.2002 by [S.S.I. 2002/170](#), [art. 2\(1\)](#); s. 25 in force for further specified purposes at 1.7.2002 by [S.S.I. 2002/170](#), [art. 2\(3\)](#); s. 25 in force for further specified purposes at 1.6.2003 by [S.S.I. 2002/170](#), [art. 2\(5\)](#)
- I4** S. 25 in force at 28.2.2003 for specified purposes by [S.S.I. 2003/62](#), [art. 2\(1\)\(c\)](#)
- I5** [S. 25](#) in force at 4.3.2004 for specified purposes by [S.S.I. 2004/33](#), [art. 2\(1\)\(b\)](#)
- I6** [S. 25](#) in force at 1.4.2004 for specified purposes by [S.S.I. 2004/33](#), [art. 2\(2\)\(a\)](#)

## 26 Guidance and directions **S**

Without prejudice to—

- (a) section 5 of the 1968 Act (functions of Scottish Ministers);
- (b) sections 2 (Health Boards), 10 (Common Services Agency) and 12A (National Health Service trusts) of, and paragraph 6 of Schedule 7A to, the 1978 Act; and
- (c) sections 5(1)(b), 6(1), (2)(b)(ii) and (4) and 17(1) and (5) of this Act,

the Scottish Ministers may issue relevant guidance and directions to local authorities and NHS bodies (that is to say such guidance and directions as appear to the Scottish Ministers to be requisite in relation to, or in consequence of, the provisions of this Act) as to the exercise by those authorities and bodies of any function.

## 27 Short title and commencement **S**

- (1) This Act may be cited as the Community Care and Health (Scotland) Act 2002.
- (2) This Act, except this section and section 23, comes into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be so appointed for different provisions and for different purposes.

### Subordinate Legislation Made

- P1** [S. 27\(2\)](#) power fully exercised: different dates appointed for specified provisions by [S.S.I. 2002/170](#), [art. 2](#)

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## SCHEDULE 1 S

(introduced by section 1(1)(e))

### SOCIAL CARE NOT ORDINARILY CHARGED FOR

- 1 As regards the personal hygiene of the person cared for—
- (a) shaving;
  - (b) cleaning teeth (whether or not they are artificial) by means of a brush or dental floss and (in the case of artificial teeth) by means of soaking;
  - (c) providing assistance in rinsing the mouth;
  - (d) keeping finger nails and toe nails trimmed;
  - (e) assisting the person with going to the toilet or with using a bedpan or other receptacle;
  - (f) where the person is fitted with a catheter or stoma, providing such assistance as is requisite to ensure cleanliness and that the skin is kept in a favourable hygienic condition;
  - (g) where the person is incontinent—
    - (i) the consequential making of the person’s bed and consequential changing and laundering of the person’s bedding and clothing; and
    - (ii) caring for the person’s skin to ensure that it is not adversely affected.
- [<sup>F23</sup>2 As regards eating requirements, the preparation of, or the provision of any assistance with the preparation of, the person’s food including (without prejudice to that generality)—
- (a) defrosting, washing, peeling, cutting, chopping, pureeing, mixing or combining, cooking, heating or re-heating, or otherwise preparing food or ingredients;
  - (b) cooking, heating or re-heating pre-prepared fresh or frozen food;
  - (c) portioning or serving food;
  - (d) cutting up, pureeing or otherwise processing food to assist with eating it;
  - (e) advising on food preparation; and
  - (f) assisting in the fulfilment of special dietary needs,
- but not the supply of food (whether in the form of a pre-prepared meal or ingredients for a meal) to, or the obtaining of food for, the person, or the preparation of food prior to the point of supply to the person.]

#### Textual Amendments

**F23** Sch. 1 para. 2 substituted (1.4.2009) by Community Care and Health (Scotland) Act 2002 (Amendment to schedule 1) Order 2009 (S.S.I. 2009/137), arts. 1, 2

- 3 If the person is immobile or substantially immobile, dealing with the problems of that immobility.
- 4 If the person requires medical treatment, assisting with medication, as for example by—
- (a) applying creams or lotions;
  - (b) administering eye drops;
  - (c) applying dressings in cases where this can be done without the physical involvement of a registered nurse or of a medical practitioner;
  - (d) assisting with the administration of oxygen as part of a course of therapy.



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- 5 With regard to the person’s general well-being—
- (a) assisting with getting dressed;
  - (b) assisting with surgical appliances, prosthesis and mechanical and manual equipment;
  - (c) assisting with getting up and with going to bed;
  - (d) the provision of devices to help memory and of safety devices;
  - (e) behaviour management and psychological support.

**SCHEDULE 2** S  
(introduced by section 25)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

*Social Work (Scotland) Act 1968 (c.49)*

- 1 (1) The 1968 Act is amended as follows.
- <sup>F24</sup>(2) .....
- <sup>F25</sup>(3) .....
- (4) In section 13A(2) (residential accommodation with nursing), the word “The”, where it first occurs, is repealed.
- (5) In section 94(1) (interpretation), in paragraph (c) of the definition of “prescribed”, after the word “sections” there is inserted “ 12(3A), ”.

**Textual Amendments**

- F24** Sch. 2 para. 1(2) repealed (1.4.2014) by The Social Care (Self-directed Support) (Scotland) Act 2013 (Consequential and Saving Provisions) Order 2014 (S.S.I. 2014/90), art. 1, **sch. Pt. 1** (with art. 3)
- F25** Sch. 2 para. 1(3) repealed (1.4.2014) by The Social Care (Self-directed Support) (Scotland) Act 2013 (Consequential and Saving Provisions) Order 2014 (S.S.I. 2014/90), art. 1, **sch. Pt. 1** (with art. 3)

**Commencement Information**

- I7** Sch. 2 para. 1 wholly in force at 1.6.2003; Sch. 2 para. 1 not in force at Royal Assent see s. 27(2); Sch. 2 para. 1(1)(4) in force at 1.4.2002 by S.S.I. 2002/170, **art. 2(1)**; Sch. 2 para. 1(5) in force at 1.7.2002 by S.S.I. 2002/170, **art. 2(3)**; Sch. 2 para. 1(2)(3) in force at 1.6.2003 by S.S.I. 2002/170, **art. 2(5)**

*National Health Service (Scotland) Act 1978 (c.29)*

- 2 (1) The 1978 Act is amended as follows.
- (2) In section 16A (payments by Health Boards towards expenditure of others on community services), after subsection (4) there is added—
- “(5) This section is without prejudice to section 13 of the Community Care and Health (Scotland) Act 2002 (asp 5) (payments by NHS bodies towards certain local authority expenditure).”.

<sup>F26</sup>(3) .....

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- (4) In section 29 (the NHS Tribunal)—
- F27(a) .....
- (b) in subsection (8)—
- F28(i) .....
- F29(ii) .....
- (iii) for the words “this Part” there is substituted “ or by virtue of this Part or Part I of this Act ”.
- (5) In section 29A (the NHS Tribunal: supplementary)—
- (a) in subsection (3)—
- (i) in paragraph (a), after the word “providing” there is inserted “ , or as the case may be performing, ”; and
- (ii) in paragraph (b), after the word “provision” there is inserted “ , or performance, ”; and
- F30(b) .....
- (6) In section 29B (powers of NHS Tribunal)—
- F31(a) .....
- F32(b) .....
- F33(c) .....
- F34(7) .....
- F34(8) .....
- (9) In section 32A (applications for interim suspension)—
- (a) in subsection (2A)(a), after the word “Part” there is inserted “ , section 17C arrangements or a pilot scheme ”;
- F35(b) .....
- F36(c) .....
- (10) In section 32B—
- (a) in subsection (2)—
- (i) in paragraph (a), for the words “direction under section 29(3)(b)” there is substituted “ national disqualification ”; and
- (ii) in paragraph (b), for the words “that direction” there is substituted “ the disqualification ”; and
- F37(b) .....
- F38(11) .....
- (12) In section 108(1) (interpretation), at the appropriate places there are inserted—
- F39“ ... ”;
- ““pilot scheme” has the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46);”;
- ““services list” has the meaning indicated in section 17EA(2);”;
- ““supplementary list” has the meaning indicated in section 24B(2);”.

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- (13) In paragraph 17 of Schedule 7A, at the beginning there is inserted “Subject to the provisions of any regulations made under section 15(4)(c) of the Community Care and Health (Scotland) Act 2002 (asp 5),”.

#### Textual Amendments

- F26** Sch. 2 para. 2(3) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), s. 9(1), **Sch. para. 3(3)(a)**; S.S.I. 2004/58, art. 2(3)
- F27** Sch. 2 para. 2(4)(a) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F28** Sch. 2 para. 2(4)(b)(i) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F29** Sch. 2 para. 2(4)(b)(ii) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F30** Sch. 2 para. 2(5)(b) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F31** Sch. 2 para. 2(6)(a) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F32** Sch. 2 para. 2(6)(b) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F33** Sch. 2 para. 2(6)(c) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), s. 43(3), **sch. 3**; S.S.I. 2006/121, art. 3(b), sch. 2
- F34** Sch. 2 para. 2(7)(8) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), s. 43(3), **sch. 3**; S.S.I. 2006/121, art. 3(b), sch. 2
- F35** Sch. 2 para. 2(9)(b) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), s. 43(3), **sch. 3**; S.S.I. 2006/121, art. 3(b), sch. 2
- F36** Sch. 2 para. 2(9)(c) omitted (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 1, **Sch. para. 6(b)**
- F37** Sch. 2 para. 2(10)(b) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), s. 43(3), **sch. 3**; S.S.I. 2006/121, art. 3(b), sch. 2
- F38** Sch. 2 para. 2(11) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), s. 43(3), **sch. 3**; S.S.I. 2006/121, art. 3(b), sch. 2
- F39** Words in Sch. 2 para. 2(12) repealed (1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (asp 1), s. 9(1), **sch. para. 3(3)(b)**; S.S.I. 2004/58, art. 2(3)

#### Commencement Information

- I8** Sch. 2 para. 2(3)(12) in force at 28.2.2003 by S.S.I. 2003/62, **art. 2(1)(c)**
- I9** Sch. 2 para. 2(4)(a) in force at 4.3.2004 for specified purposes by S.S.I. 2004/33, art. 2(1)(d), **Sch.**
- I10** Sch. 2 para. 2(4)(a)(b)(iii)(6)(a)(6)(b)(8)(b)(i)(9)(c)(11)(b)(11)(c) in force at 1.4.2004 in so far as not already in force by S.S.I. 2004/33, **art. 2(2)(b)**
- I11** Sch. 2 para. 2(4)(b)(i)(5)(b)(7)(8)(a)(10)(11)(a) in force at 4.3.2004 by S.S.I. 2004/33, **art. 2(1)(c)**
- I12** Sch. 2 para. 2(4)(b)(i)(ii)(5)(6)(c)(8)(b)(ii)(9)(a)(9)(b)(11)(a) in force at 1.4.2004 by S.S.I. 2004/33, **art. 2(2)(b)**
- I13** Sch. 2 para. 2(4)(b)(iii) in force at 4.3.2004 for specified purposes by S.S.I. 2004/33, art. 2(1)(d), **Sch.**
- I14** Sch. 2 para. 2(6)(a) in force at 4.3.2004 for specified purposes by S.S.I. 2004/33, art. 2(1)(d), **Sch.**
- I15** Sch. 2 para. 2(6)(b) in force at 4.3.2004 for specified purposes by S.S.I. 2004/33, art. 2(1)(d), **Sch.**
- I16** Sch. 2 para. 2(9)(c) in force at 4.3.2004 for specified purposes by S.S.I. 2004/33, art. 2(1)(d), **Sch.**

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*National Health Service (Primary Care) Act 1997 (c.46)*

- 3 In Schedule 2 to the National Health Service (Primary Care) Act 1997 (amendments of enactments), paragraph 57, in so far as providing for a definition of the expression “medical list”, is repealed.

**Commencement Information**

I17 Sch. 2 para. 3 in force at 28.2.2003 by S.S.I. 2003/62, art. 2(1)(c)

PROSPECTIVE

*Health Act 1999 (c.8)*

- 4 In Schedule 4 to the Health Act 1999 (amendments of enactments), paragraph 52(b) is repealed.

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