Community Care and Health (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1
COMMUNITY CARE

Charging for social care

1 Regulations as respects charging for social care

Accommodation

2 Accommodation provided under 1968 Act
3 Disregarding of resources when determining whether to make available assistance by providing residential accommodation
4 Accommodation more expensive than usually provided
5 Local authority arrangements for residential accommodation outwith Scotland
6 Deferred payment of accommodation costs

Direct payments

7 Direct payments

Carers

8 Amendment of 1968 Act: assessment of ability to provide care
9 Amendment of Children (Scotland) Act 1995: assessment of ability to provide care for disabled child

PART 2
JOINT WORKING, ETC.

10 Payments by NHS bodies towards certain local authority expenditure
11 Payments by local authorities towards expenditure by NHS bodies on prescribed functions
12 Delegation etc. between local authorities and NHS bodies
13 Transfer of staff
14 Scottish Ministers’ power to require delegation etc. between local authorities and NHS bodies

PART 3
HEALTH

Health Boards’ lists

15 Services lists and supplementary lists
16 Representations against preferential treatment
Miscellaneous

17 Amendment of Road Traffic Act 1988 and Road Traffic (NHS Charges) Act 1999: payment for treatment of traffic casualties

18 Amendment of 1978 Act: schemes for meeting losses and liabilities etc. of certain health bodies

PART 4

GENERAL

19 Interpretation
20 Regulations
21 Transitional provisions, etc.
22 Minor and consequential amendments
23 Guidance and directions
24 Short title and commencement

Schedule—Minor and consequential amendments
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

COMMUNITY CARE

Charging for social care

1 Regulations as respects charging for social care

(1) The Scottish Ministers may by regulations—

(a) require a local authority—

(i) to charge; or

(ii) not to charge,

for such social care provided 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.

(2) Regulations under subsection (1) 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

ACCOMPANYING DOCUMENTS
Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 34-EN. A Policy Memorandum is printed separately as SP Bill 34-PM.
(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.

(3) 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—

(a) to be charged; or

(b) not to be charged,

by virtue of section 1 of the Community Care and Health (Scotland) Act 2001 (asp 00) (regulations as respects charging for social care).”.

Accommodation

2 Accommodation provided under 1968 Act

For the purposes of the definition of “social care” in section 19(1) and (2) of this Act and of section 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.

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

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.

(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

(1) The Scottish Ministers may by regulations make provision, in relation to accommodation provided under the 1968 Act or under section 7 of the 1984 Act (functions of local authorities), 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, including those liable to maintain residents by virtue of section 42 of the National Assistance Act 1948 (c.29) (liability to maintain wife or husband and children).

(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”.

5 Local authority arrangements for residential accommodation outwith Scotland

(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, 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, 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 such arrangements.

(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.

(5) In subsections (1) and (3) above, the references to an appropriate establishment mean, in relation to—

(a) section 12 of the 1968 Act—
Community Care and Health (Scotland) Bill
Part 1—Community care

(i) as respects England and Wales, an establishment carried on or managed by a person registered in respect of it under Part II of the Care Standards Act 2000 (c.14); and

(ii) as respects Northern Ireland, any of the Channel Islands or the Isle of Man, an establishment of such description as may be specified in regulations under subsection (1) above; and

(b) section 13A of the 1968 Act, such establishment as is mentioned in—

(i) sub-paragraph (i) of paragraph (a) above, if that establishment is an independent hospital, in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983 (c.20), or a care home; and

(ii) sub-paragraph (ii) of that paragraph, if that establishment conforms to such requirements as may be specified in regulations under subsection (1) above.

(6) In subsection (5)(b)(i) above—

“care home” has the meaning given by section 3 of the Care Standards Act 2000; and

“independent hospital” has the meaning given by section 2(2) (as read with section 121(1)) of that Act.

6 Deferred payment of accommodation costs

(1) Where—

(a) a local authority are providing, or have secured the provision of, residential accommodation for a person under the 1968 Act or section 7 of the 1984 Act (functions of local authorities), or are proposing to make or secure such provision; and

(b) 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 the directions, enter into a deferred payment agreement with the person.

(2) A “deferred payment agreement” is an agreement which provides—

(a) that payment of the portion mentioned in subsection (3) below (the “relevant portion”) of all 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—

(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.

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 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, without first
assessing the person’s ability to contribute to securing the provision of the
service in question, may be determined on the assumption 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
(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 excercisable” 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;”; and

(d) after subsection (5) there is inserted—

“(5A) An authority which has made a determination by virtue of subsection (1A) above in respect of a payment, shall thereafter assess what the recipient’s ability to contribute to securing the provision of the service in question was immediately before that determination; and having regard to the assessment they may require from him such repayment as appears to them appropriate.”.

Carers

8 Amendment of 1968 Act: assessment of ability to provide care

(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 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 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.”.

Amendment of Children (Scotland) Act 1995: assessment of ability to provide care for disabled child

For subsection (1) of section 24 of the Children (Scotland) Act 1995 (c.36) (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—

“(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 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
Community Care and Health (Scotland) Bill
Part 2—Joint working, etc.

(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.”.

PART 2

JOINT WORKING, ETC.

10 Payments by NHS bodies towards certain local authority expenditure

(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 any prescribed function of that authority 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).

11 Payments by local authorities towards expenditure by NHS bodies on prescribed functions

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,
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.

12 Delegation etc. between local authorities and NHS bodies

(1) Any number of local authorities and NHS bodies may, in accordance with regulations made by the Scottish Ministers, enter into arrangements for—

(a) the delegation to—

(i) any of the NHS bodies of the exercise, in conjunction with functions mentioned in paragraph (b) of subsection (2) below, of functions mentioned in paragraph (a) of that subsection; and
(ii) any of the local authorities of the exercise, in conjunction with functions mentioned in paragraph (a) of that subsection, of functions mentioned in paragraph (b) of that subsection;

(b) the making of payments—

(i) by the local authority to the NHS body in connection with arrangements mentioned in paragraph (a)(i) above; and
(ii) by the NHS body to the local authority in connection with arrangements mentioned in paragraph (a)(ii) above; and

(c) for the purposes of paragraph (b) above and, if they so wish, also for the purpose of making payments towards expenditure incurred in exercising functions mentioned in subsection (2) below which are not delegated as mentioned in paragraph (a) above, the establishment and maintenance of a fund—

(i) which may be held by any of the local authorities or NHS bodies;

(ii) to which any of the authorities and bodies (a “contributor”) may make payments; and

(iii) out of which any contributor may make payments towards expenditure incurred by that contributor in exercising functions mentioned in subsection (2) below.

(2) The functions are—

(a) prescribed functions of local authorities; and

(b) prescribed functions of NHS bodies.

(3) Arrangements mentioned in subsection (1) above may be entered into by a local authority or an NHS body only if, in their opinion, to do so would be likely to lead to an improvement in the way in which functions mentioned in subsection (2) above are exercised; and for this purpose the reference to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.

(4) Regulations under subsection (1) above may in particular make provision—

(a) as to cases (or classes of case) as respects which a local authority or an NHS body may not enter into arrangements mentioned in that subsection;

(b) as respects consultation by local authorities and NHS bodies on proposals to enter into any such arrangements;

(c) as respects the provision of staff in connection with any such arrangements, including the transfer and secondment, and terms and conditions, of such staff;

(d) as respects the provision of goods, services or accommodation in connection with any such arrangements;

(e) requiring the approval of the Scottish Ministers to the entering into of any such arrangements or class of arrangements (including the circumstances in which such approval is required, how it is to be sought, and the grant, with or without modification, or refusal, of approval);

(f) for the variation or termination of any such arrangements, including variation or termination at the direction of the Scottish Ministers given after consultation with the local authorities and NHS bodies; or

(g) as to the monitoring and supervision by the local authorities and NHS bodies of arrangements entered into by virtue of subsection (1) above.

(5) Arrangements entered into by virtue of subsection (1) above—

(a) do not affect—

(i) the liability of a local authority in relation to the exercise of any of their functions;
(ii) the liability of an NHS body in relation to the exercise of any of its functions; or
(iii) any power or duty to recover sums in respect of services provided in the exercise of any of their functions; and
(b) do not prevent any such authority or body from themselves, or itself, exercising—
(i) the delegated function; or
(ii) any power delegated with the function.

13 Transfer of staff

(1) This section applies where, by virtue of section 12(4)(c) of this Act, a person is transferred from one entity (the “transferring authority”) to another (the “receiving authority”).

(2) The contract of employment between the person and the receiving authority has effect from the date of transfer as if originally made between the person and the transferring authority.

(3) Without prejudice to subsection (2) above—

(a) all the transferring authority’s rights, powers, duties and liabilities under or in connection with the contract transfer, by virtue of this paragraph, to the receiving authority on that date; and

(b) anything done before that date by or in relation to the transferring authority in respect of that contract or of the employee is deemed as from that date to have been done by or in relation to the receiving authority.

(4) Subsections (2) and (3) above are without prejudice to any right of the person to terminate the contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but change is not to be taken to have occurred by reason only of the fact that the employer is changed by virtue of section 12(4)(c) of this Act.

(5) Where a person—

(a) has, prior to the date of transfer, entered into a contract of employment with the transferring authority and that contract is to come into effect or on after that date; and

(b) would, if the contract had come into effect before that date, have been a person to whom this section applies,

the person is treated as one to whom this section does apply.

14 Scottish Ministers’ power to require delegation etc. between local authorities and NHS bodies

(1) Subject to subsection (4)(a) of section 12 of this Act, if in the opinion of the Scottish Ministers (formed after consultation with the local authority or NHS body in question)—

(a) any function mentioned in—

(i) paragraph (a) of subsection (2) of that section is not being exercised adequately by a local authority; or
(ii) paragraph (b) of subsection (2) of that section is not being exercised adequately by an NHS body; and

(b) it would be likely to lead to an improvement in the way in which the function is exercised if the authority or the body in question were to enter into arrangements mentioned in subsection (1) of that section as respects the function (the “principal function”),

the Scottish Ministers may direct the local authority or, as the case may be, the NHS body to enter into such arrangements as may be specified in the direction as respects the principal function and such other function as is mentioned in subsection (2) below.

(2) The other function is any other function of the authority or body which the Scottish Ministers consider would, if it were exercised in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the principal function.

(3) In this section, reference to an improvement in the way in which functions are exercised shall be construed in the same way as in section 12 of this Act.

(4) The Scottish Ministers, when giving a direction under subsection (1) above (a “principal direction”), may give a direction under this subsection (a “secondary direction”) to such other local authority or NHS body as they consider appropriate, such secondary direction being for or in connection with securing that full effect is given to the principal direction.

(5) Arrangements entered into in pursuance of a direction under this section must comply with such requirements, additional to those contained in regulations under section 12(4) of this Act, as may be specified in that direction.

**PART 3**

**HEALTH**

*Health Boards’ lists*

**15 Services lists and supplementary lists**

(1) After section 17E of the 1978 Act there is inserted—

“17EA Services lists

(1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to perform personal medical services—

(a) in accordance with section 17C arrangements; or

(b) in connection with the provision of such services under a pilot scheme.

(2) Such a list is in this section referred to as a “services list”.

(3) Unless his name is included in the Board’s services list as that of a person approved to do so, a medical practitioner may not perform medical services in the Board’s area—

(a) in accordance with such arrangements; or

(b) in such connection.

(4) The regulations may (either or both)—
(a) make provision for the application (with such modifications as the Scottish Ministers think fit) to services lists or to persons who are, have been or seek to be included in a services list, of;

(b) in relation to such lists and persons, make provision analogous to any provision made by,

any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.

(5) In subsection (1)(b), “pilot scheme” has the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46).”.

(2) After section 24A of that Act there is inserted—

“24B Supplementary lists

(1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to assist in the provision of general medical services.

(2) Such a list is in this section referred to as a “supplementary list”.

(3) A medical practitioner whose name is not included in the Board’s medical list may not assist in the provision of general medical services in the Board’s area unless his name is included in the Board’s supplementary list.

(4) The regulations may (either or both)—

(a) make provision for the application (with such modifications as the Scottish Ministers think fit) to supplementary lists or to persons who are, have been or seek to be included in a supplementary list, of;

(b) in relation to such lists and persons, make provision analogous to any provision made by,

any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.”.

16 Representations against preferential treatment

In Schedule 1 to the National Health Service (Primary Care) Act 1997 (c.46) (which applies in certain circumstances where a determination is made that a medical practitioner is to be given preferential treatment on making an application to be included in a Health Board’s medical list after ceasing to perform personal medical services in connection with the provision of such services under a pilot scheme), both—

(a) in paragraph 3(1), at the end; and

(b) in paragraph 4(1), after the word “area”,

there is added “or that the applicant meets the second condition for disqualification mentioned in section 29 of the 1978 Act”. 

17 Amendment of Road Traffic Act 1988 and Road Traffic (NHS Charges) Act 1999: payment for treatment of traffic casualties

(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”.

(3) In section 1(1)(a) of the Road Traffic (NHS Charges) Act 1999 (c.3) (payment for hospital treatment of traffic casualties), after the word “road” there is inserted “or in some other public place”.

18 Amendment of 1978 Act: schemes for meeting losses and liabilities etc. of certain health bodies

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
GENERAL

19 Interpretation

(1) In this Act—

“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);

“the 1984 Act” means the Mental Health (Scotland) Act 1984 (c.36);

“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; or

(d) the Common Services Agency, constituted by section 10(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) under section 7 (arrangements in relation to persons who are or have been suffering from mental disorder) or 8 (provision of after-care services for such persons) of the 1984 Act,

to an individual 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 reference to a service being provided is to the provision of any other form of assistance (including, without prejudice to that generality, the provision of advice, guidance or a material thing).

20 Regulations

(1) Any order or regulations under this Act is to be made by statutory instrument; and a statutory instrument containing any such order, other than an order under section 24(2) of this Act, or any such regulations is subject to annulment in pursuance of a resolution of the Parliament.

(2) Any such order or regulations may make different provision for different cases, for different services and for different persons.

21 Transitional provisions, etc.

(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).

22 Minor and consequential amendments

The schedule to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

23 Guidance and directions

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 14(1) and (4) 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.
24 Short title and commencement

(1) This Act may be cited as the Community Care and Health (Scotland) Act 2001.

(2) This Act, except this section, 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.
SCHEDULE
(introduced by section 22)

MINOR AND CONSEQUENTIAL AMENDMENTS

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

1 (1) The 1968 Act is amended as follows.

(2) In section 12B(7) (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), for the word “service” there is substituted “services”.

(3) In section 12C(2) (effect of direct payment on obligation of local authority with respect to the provision of the service to which it relates)—

(a) for the words “section 12B(1)” there is substituted “subsection (1) of section 12B”;

(b) after the word “relates” there is inserted “(except in so far as it is provided by them by virtue of that subsection)”;

(c) for the words “the person’s own arrangements” there is substituted “that subsection”.

(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),”.

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 10 of the Community Care and Health (Scotland) Act 2001 (asp 00) (payments by NHS bodies towards certain local authority expenditure).”.

(3) In section 29 (the NHS Tribunal)—

(a) in subsection (6), at the end there is added “, are approved to assist in providing or are approved to perform”; and

(b) in subsection (8)—

(i) at the end of paragraph (a), there is added “or approved to assist in the provision of such services”; and

(ii) after that paragraph, there is inserted—

“(aa) a list of medical practitioners approved to perform personal medical services—

(i) in accordance with section 17C arrangements; or
(ii) in connection with the provision of such services under a pilot scheme (“pilot scheme” having the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46));”.

(4) 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

(b) after subsection (3) there is inserted—

“(3A) Without prejudice to the generality of subsection (3), that subsection applies in relation to the provision of general medical services in the area of a Health Board even where the practitioner’s name is included only in a supplementary list of the Board.”.

(5) In section 29B (powers of NHS Tribunal)—

(a) in subsection (2)(b), for the words from “in” to the end there is substituted “—

(i) in the case of a medical practitioner, in all lists within paragraphs (a) and (aa) of subsection (8) of section 29; and

(ii) in any other case, in all lists within the same paragraph of that subsection as that list.”; and

(b) in subsection (3), after the word “provision” there is inserted “, or as the case may be performance,”.

(6) In section 30(4) (construction of references to Health Board), after the word “providing” there is inserted “, or as the case may be performing,”.

(7) In section 31 (disqualification provisions in England and Wales or Northern Ireland)—

(a) in subsection (1)(a), after the word “provide” there is inserted “, approved to assist in providing or approved to perform”; and

(b) in subsection (2), after the word “provision”, in each of the two places where it occurs, there is inserted “, assistance in provision or performance”.

(8) In section 32A(6)(a) (interpretation of provisions relating to applications for interim suspension), after the word “provide” there is inserted “, approved to assist in providing or approved to perform”.

(9) In section 32D (suspension provisions in England and Wales or in Northern Ireland), in each of subsections (1) and (2)(a), after the word “provide” there is inserted “, approved to assist in providing or approved to perform”.
Community Care and Health (Scotland) Bill
[AS INTRODUCED]

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.

Introduced by: Susan Deacon
On: 24 September 2001
Supported by: Henry McLeish, Jackie Baillie, Mr Jim Wallace, Malcolm Chisholm
Bill type: Executive Bill

© Copyright The Scottish Parliamentary Corporate Body 2001

EDINBURGH: THE STATIONERY OFFICE

Printed in the United Kingdom by The Stationery Office Limited

£2.90

Applications for reproduction should be made in writing to the Copyright Unit, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ, Fax 01603 723000.

Produced and published in Scotland on behalf of the Scottish Parliament by The Stationery Office Ltd.

Her Majesty’s Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliament publications.