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**Circular No. CCD3/2018**

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Local Authority Chief Social Work Offices  
Social Work Scotland Self-directed Support Practice  
Forum  
Social Work Scotland Adult Social Care Committee

21 December 2018

Dear Colleagues

**Free Personal Care Guidance**

**Background**

The Cabinet Secretary for Health and Sport, Ms Jeane Freeman, and the COSLA Health and Wellbeing Spokesman, Councillor Peter Johnston, wrote a joint letter to you in July 2018 regarding The Community Care (Personal Care and Nursing Care) (Scotland) Amendment (No. 2) Regulations 2018 which come into force on 1 April 2019 and which extends free personal care to those under the age of 65.

The Scottish Government has been working with an Implementation Advisory Group which consists of members from Scottish Government, COSLA, local authorities, Integration Authorities and service providers. The Group has helped to draft statutory guidance to local authorities that outlines the provision of free personal care to those both over and under the age of 65.



Additionally, in his Budget statement on 12 December, the Cabinet Secretary for Finance, Economy and Fair Work announced that the Scottish Government would provide £30 million in 2019-20 to implement our commitment to extend Free Personal Care to Under 65s.

## Action

**Local Authorities should replace existing Free Personal and Nursing Care in Scotland with the updated Guidance, which is attached.**

## Free Personal Care

Free Personal Care is available to all adults who are assessed by their local authority as needing this service by **1 April 2019**. Local Authorities will be required to continue to measure the eligibility of those applying for personal care and those who are assessed as needing this service who will receive this service free of charge regardless of their age, condition, socio-economic status or marital status.

## Definition of Personal Care

Schedule 1 of the 2002 Act in conjunction with section 20 of Schedule 12 of the Public Service Reform (Scotland) Act 2010 provides the definition of personal care which is shown at Annexes B and C in the guidance.

## Funding

There will be two elements of funding for social care in the year 2019/20:

- £120 million will be transferred from the health portfolio to the Local Authorities in-year for investment in integration, including delivery of the Living Wage and uprating free personal care, and school counselling services; and
- £40 million has been included directly in the Local Government settlement to support the continued implementation of the Carers (Scotland) Act 2016 and to extend free personal care for those under the age of 65.

## Enquiries

All enquiries relating to this circular should be emailed to [adultsocialcare@gov.scot](mailto:adultsocialcare@gov.scot) or by telephone on 0131 244 5403.

This circular is also available on the SHOW website at [https://www.sehd.scot.nhs.uk/publications/CC2018\\_03.pdf](https://www.sehd.scot.nhs.uk/publications/CC2018_03.pdf).

Yours faithfully

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# GUIDANCE ON FREE PERSONAL AND NURSING CARE IN SCOTLAND FOR ADULTS

## GUIDANCE FOR LOCAL AUTHORITIES, THE NHS BOARDS AND HEALTH AND SOCIAL CARE PARTNERSHIPS (HSCPs) AND OTHER SERVICE PROVIDERS

December 2018

(Electronic version [https://www.sehd.scot.nhs.uk/publications/CC2018\\_03.pdf](https://www.sehd.scot.nhs.uk/publications/CC2018_03.pdf))

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## 1. INTRODUCTION

1. This guidance is an update of the Free Personal and Nursing Care in Scotland guidance and details action required for the extension of Free Personal Care to all adults under the age of 65. This replaces the guidance in circular No. CCD5/2003. This policy is to be implemented nationally by 1 April 2019.

### Background

2. Free Personal Care for those aged 65 or over was introduced in Scotland in 2002, following the passing of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”). The policy was reviewed by Lord Sutherland in 2008, and as a result, additional funding was provided to local authorities by the Scottish Government. The Free Personal and Nursing Care payment rates for people who are self-funders residing in care homes have been updated periodically in line with inflation.
3. The Scottish Government conducted a feasibility study into extending free personal care to people under the age of 65 which was [published](#) in September 2017. The study showed that extending free personal care was an option which could have important benefits for many of those who are charged for this support, including increased uptake of services, and would ensure that charging arrangements for personal care apply equally regardless of age, condition or means. In addition, other people who may in the past have declined support due to concerns about the cost would be able to receive that care, if eligible.
4. The First Minister during her Programme for Government announcement on 5 September 2017 declared that the Scottish Government would over the next year begin work to fully implement what had now become known as Frank’s Law, by extending free personal care to those aged under 65 who are assessed as needing this service, regardless of age, condition or means. The Programme for Government stated that the Scottish Government would work with the Convention of Scottish Local Authorities (COSLA) and a range of stakeholders to shape the implementation of this policy.
5. Scottish Government officials established an Implementation Advisory Group (IAG) to advise on the delivery of the extended policy.
6. A significant number of adults under the age of 65 already receive their personal care free of charge because of their income and assets in line with local charging policies, however the government’s aim was to ensure that local authorities would be required to provide free personal care to all eligible adults by 1 April 2019.
7. This guidance has been prepared by the Scottish Government with input from the IAG which includes representatives from the Scottish Government, COSLA, HSCPs, local authorities, service providers and supported people.

### Legislative Framework



8. The Social Work (Scotland) Act 1968 (“the 1968 Act”) sets out the legislative framework stating *“It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance as may be appropriate for their area.”* The 2002 Act provides the legislative backing to provide personal care free of charge. However The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002 (“the 2002 Regulations”) qualifies this by providing that local authorities only require to not charge for personal care for those persons aged 65 years or over. The Community Care (Personal Care and Nursing Care) (Scotland) Amendment (No. 2) Regulations 2018 revokes regulation 3 of the 2002 Regulations, removing this qualification, thereby extending personal care entitlement to all adults who are assessed by the local authority as needing this service, free of charge.
9. Schedule 1 of the 2002 Act in conjunction with section 20 of Schedule 12 of the Public Service Reform (Scotland) Act 2010 (“the 2010 Act”) provides the definition of personal care which is shown at Annex B and C. The Acts and explanatory notes are available through HMSO or on [www.scotland-legislation.hmso.gov.uk](http://www.scotland-legislation.hmso.gov.uk)
10. The Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) places a duty on local authorities to adhere to the general principles of the 2013 Act:
  - a. A supported person must have as much involvement as they wish, in relation to their assessment of needs for support or services and the provision of support or services.
  - b. A supported person must be provided with any assistance that is reasonably required to enable them to express any views they may have about their options for self-directed support and to make an informed choice when choosing an option for self-directed support.
  - c. Local authorities must collaborate with a supported person in relation to the assessment of their needs for support or services and the provision of support or services for the supported person.
11. After the local authority has identified the supported person’s needs in collaboration with the adult, the local authority must offer four options in relation to any relevant support identified at the assessment stage. The four options provided under the 2013 Act are:
  - Option 1 The making of a direct payment by the local authority to the supported person for the provision of support.
  - Option 2 The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the local authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.
  - Option 3 The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.

- Option 4      The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

## Key Aspects of the Policy

### Transition from Child to Adult Services

12. Currently children are not charged for any social care (either personal or non-personal) up to the point that they transition from children's social work services to adult social work services, which can be at any point between their 16th and 18th birthdays for children not looked after by local authorities, depending on the service provided by the local authority.
13. Young people who have been looked after until their 16<sup>th</sup> birthday are entitled to support in order to smooth the transition to adulthood, in terms of duties in the Children (Scotland) Act 1995, as extended by the Children and Young People (Scotland) Act 2014. This assists such young people to access appropriate support, including personal care. Specifically, "continuing care" is the right to the same accommodation and assistance that the young person was being provided with immediately before ceasing to be looked after. This applies until age 20 (though this age limit will from April 2019 be raised to age 21) unless the young person chooses to leave the accommodation before then.
14. If a young person is not being provided with "continuing care", then, up to age 19, the young person is entitled to "aftercare" which is advice, guidance and assistance. From age 19 until age 26, some elements of aftercare can be provided by a local authority on a discretionary basis.
15. The extension of Free Personal Care to under 65s will mean that all children and young adults between 16 and 18 years of age will, from 1st April 2019, be eligible to receive their personal care without charge.

### Implementation

16. Implementation can be put into 2 broad categories:
  - a. **Care at home** - arrangements for adjusting local authority systems to take into account the personal care for those receiving care in their home.
  - b. **Care Home Provision** - arrangements for flat rate payments for personal care and/or nursing care for those in receipt of care home services who currently meet their own care costs.
17. The key aspects of the extended policy are:

*For those living in their own home*
18. All eligibility for free personal care is subject to an assessment by the local authority. No local authority charge will be made for such personal care services after 1 April 2019. Eligibility for free personal care is made irrespective of income, capital assets, marital status or the care contribution currently provided by an unpaid carer. Non

personal care services will continue to be subject to charges at the discretion of the local authority as set out in the current guidance for non-residential charges as issued by COSLA.

*For those living in a care home*

19. The provision of payments towards personal care will apply to those who pay their own care costs (self-funders). Arrangements for those already resident in care homes on 1 April 2019 are set out in paragraphs 22 and 23 of Section 2 of this guidance. For those assessed as eligible for personal care payments, these will be paid directly to the care home by the local authority.
20. For those people who are self-funders entering a care home after 1 April 2019, an assessment will be required to be carried out before they become eligible for personal and/or nursing care payments. People who are self-funders will continue to pay the remainder of their own costs, often described as living or accommodation costs.

**Attendance Allowance, Disability Living Allowance and Universal Credit (care components) when residing in a care home**

21. It is important to clarify that social security benefits legislation provides that where a supported person receives funding towards the cost of their place in a care home from a public source, payment of Attendance Allowance and the care components of Disability Living Allowance and Universal Credit must cease 4 weeks after the funding starts. It is the responsibility of the person or person's family who has moved to a care home to report receipt of personal care payments to the Department for Work and Pensions as soon as they start to receive free personal care. If they fail to do so, and continue to receive payments to which they are no longer entitled, they are likely to be required to repay them.

**Action required by local authorities/HSCPs**

22. This guidance sets out the key actions required by local authorities/HSCP's to ensure measured, consistent and effective implementation across Scotland. Local authorities will need to work closely with a number of agencies including the voluntary and independent sector as well as the NHS and housing providers so they can provide appropriate information and support to their clients.

## **2. ELIGIBILITY**

### **Assessment**



1. Eligibility for free personal and nursing care will be subject to an assessment arranged by the local authority except where the supported person is already in a care home on 1 April 2019 and has already been assessed by the local authority as requiring personal care. For these supported people, arrangements are set out at paragraphs 22 and 23 below.
2. This section focuses on the assessment arrangements local authorities have in place for assessing the care of supported people. This guidance should also be read in conjunction with the 1968 Act and the 2013 Act. Any reference to an assessment should be understood in the context of the implementation of multi-agency assessment, which aims to ensure the care requirements of the supported person are identified as quickly and effectively as possible and that they are focussed on personal outcomes. Supported people's assessments should be distinct from any financial assessment, which is addressed separately in section 3 of this guidance.
3. The underpinning principle for identifying the supported person's specified care needs is to put in place a personalised support plan. Authorities should therefore foster this approach when responding to referrals and applications for funding. In other words in order to receive a payment for personal care the supported person must have received an assessment in order to ascertain whether the care in place, including personal care, is the most appropriate. As determined by the 2013 Act, the person will be fully involved in this process and supported to make informed choices. Authorities will need to be clear in their local policies and protocols that funding for personal care will only be available for supported people whose needs have been assessed. Local authorities must take carers' views into account so far as it is reasonable and practicable to do so in assessing the needs of the supported person and in deciding whether and how to provide services for the supported person.

## Care at Home

4. By 1 April 2019, local authorities will be responsible for making payments, or no longer charging for the personal care element of a support package. Local authorities will already have in place mechanisms for the assessment of need and provision of care services based on that need. The implementation of free personal care should build on these mechanisms.
5. Local authorities will already know the identified support in place for existing supported people over the age of 65 in their areas. There will be systems in place for monitoring and reviewing supported people's care requirements and there is no reason why the implementation of the extension of free personal care policy should require re-assessments for existing supported people over the age of 65, unless a supported person requires or requests a review. However action will be required to determine the personal care element of a supported person's needs under the age of 65, to ensure those who are eligible for free personal care do not pay for this component. Guidance on payment mechanisms is set out in section 5.
6. Local authorities should therefore provide clear guidance for staff relating to what constitutes personal and non-personal care. This guidance should also include timescales for assessments as well as guidance on service provision and service payments.
7. HSCPs, local authorities and NHS Boards will have agreements in place on how personal care services are provided locally and by whom. The implementation of the

extension of free personal care to those under the age of 65 may necessitate a review of existing provisions and strategic plans.

## Definition of Personal Care

8. Section 1 and Schedule 1 of the 2002 Act provide that local authorities are not to charge for personal care provided by them.
9. In legal terms, the definition of personal care covers both personal care and personal support (as defined in the 2010 Act). The 2002 Act requires that neither personal care nor personal support shall be charged for. In addition, it specifies that no charge should be made for the specific types of care listed in Schedule 1 to the 2002 Act as shown in **Annex B**.
10. The following guidelines offer further explanation of the components of personal care and should be read in conjunction with the relevant legislative provisions.

## Personal Hygiene

11. Assistance with washing as well as bathing and showering is included.

## Continence Management

12. Help with the use of continence equipment is included.

## Problems of Immobility

13. Only care provided to deal with the effects of immobility which directly meets a supported person's care needs as defined in the 2002 Act is included (ie personal hygiene, continence management, eating, simple treatments and personal assistance tasks).

## Food and Diet

14. The 2002 Act provides that charges may not be applied to the preparation of, or the provision of any assistance with the preparation of, a person's food including (without prejudice to that generality) –
  - defrosting, washing, peeling, cutting, chopping, pureeing, mixing or combining, cooking, heating or re-heating, or otherwise preparing food or ingredients;
  - cooking, heating or re-heating pre-prepared fresh or frozen food;
  - portioning or serving food;
  - cutting up, pureeing or otherwise processing food to assist with eating it;
  - advising on food preparation; and
  - 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.

## Simple Medical Treatments

15. The 2002 Act provides that charges may not be applied for assisting with simple medical treatment or medication, for example -.

- applying creams or lotions;
- administering eye drops;
- applying dressings in cases where this can be done without the physical involvement of a registered nurse or of a medical practitioner;
- assisting with the administration of oxygen as part of a course of therapy.

## Equipment & Adaptations

16. This policy is related to the provision of social and nursing care not the provision of equipment and adaptations. For the purposes of this policy only memory and safety devices which help supported people to manage their own personal care are included<sup>1</sup> (eg the use of personal reminder systems to allow supported people to manage their medicines or the use of sound/movement alarms linked to light controls to guide people with dementia to the toilet and minimise the risks related to wandering at night). Community alarms and other associated devices are not included in this policy.

## Personal Support

17. Personal support, is defined at paragraph 20 of schedule 12 of the 2010 Act as shown at **Annex C** and means counselling, or other help, provided as part of a planned programme of care.

## Housing Support Services

18. Housing Support Services help people to manage their home and can include help with issues such as claiming welfare benefits, completing forms, managing a household budget, keeping safe and secure and getting help from other specialist services. This support is non-personal care.

19. In practice housing support is often provided as part of a package of care which may include some services which are personal care. From a local authority perspective, housing support services which focus on helping a supported person to manage their home, should be clearly distinguishable from personal care services. In those situations where a single provider is delivering both housing support and personal care it may be harder to distinguish between personal and non-personal elements. Care should be taken to avoid additional administration which could become burdensome for the local authority or support provider.

20. Some local authorities may already separately record details of personal and non-personal care and may be able to use existing arrangements to manage and adjust charges. All local authorities should ensure that they can differentiate the various elements within a care package in terms of chargeable and non-chargeable items. Local authorities can then calculate the revised charge using their charging regime. It is recognised that this process will vary from authority to authority and local authorities will need to decide how best to undertake this task.

## Care Home Care

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<sup>1</sup> [Guidance on the Provision of Equipment and Adaptations \(CCD5/2009\)](#)

21. From 1 April 2002, supported people who apply for payment towards their care home provision, are required to have a comprehensive needs assessment carried out, to ascertain how best their care needs may be met, and whether a care home is the most appropriate setting. In some cases the outcome of the assessment may determine that the supported person's needs could be met in their own home. To ensure supported people and their families have complete clarity, local authorities should ensure there are clear protocols and guidance for staff as well as encouraging care home owners and managers to ensure prospective self-funding residents are aware of the parameters for public funding.

### **Arrangements for those already in a care home**

22. Those aged 65 and over who pay their own care home provision (self-funders) may wish to have their support plan assessed by the local authority to potentially access free personal care. From 1 April 2019 those under the age of 65 will be required to be assessed by their local authority in order to potentially access free personal care. Supported people who wish to seek the flat rate payments towards their care costs will have to notify the local authority in which they are resident. The rates for these payments are identified in The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002, as amended from time to time.

23. The extension of free personal care will not change the existing charging arrangements for care home provision under the National Assistance Act 1948 and the National Assistance (Assessment of Resources) Regulations 1992 (as amended for Scotland). These are set out in more detail in Section 3.

### **Local eligibility criteria and priorities**

24. Local authorities will need to have in place agreed eligibility criteria for assessments of need and priorities for the provision of and access to services based on need, which adhere to the [National Standard Eligibility Criteria and Waiting Times for the Personal and Nursing Care of Older People Guidance from 2009](#), which now applies to supported adults of any age. Many authorities will have these in place already and there is no requirement on authorities to change these arrangements. Local authorities are expected to ensure that their available resources are used in the most effective way to meet supported people's personal outcomes. Where local authorities have problems providing appropriate support they should have arrangements ready to meet, manage, or review personal care needs.

### **Supported People currently receiving care at home services via their local authority**

25. In preparation for the implementation of the extension of this policy, local authorities will need to inform supported people currently receiving care at home services about the level of personal care and non-personal care they receive. While a reassessment of care may be necessary in some cases, according to individual circumstances, it is envisaged that a review of the person's financial contribution using existing mechanisms may be sufficient. Local authorities will then have to calculate whether there needs to be an adjustment to any charges the supported person is currently paying for their care package. Guidance on charging is set out in Section 3.

### **Supported People currently arranging their own care home provision**

26. Supported people who currently arrange their own services and who wish to access free personal care will only be able to do so following a care assessment arranged by the local authority. Delivery of care must be based on local protocols and when the local authority is in a position to provide for the required services. Access to assessment for supported people should also be prioritised in line with local criteria.
27. In some cases an assessment arranged by the local authority may find the supported person receives services over and above their level of need according to the assessment. (The supported person may have made private arrangements for these services). The local authority will provide a contribution towards the cost of care up to the level of assessed need only and in line with local criteria for range, level and frequency of service provision.
28. Guidance on payment mechanisms for those who are currently arranging their own care and who are subsequently assessed as needing personal care services and wish to continue with the same providers is set out in Section 5.

### **Monitoring and Reviewing Care Needs**

29. Local Authorities will have formal monitoring and review systems and time-scales in place to respond to the changing care needs of supported people. These systems should reflect the Health and Social Care Standards and the Quality Framework for Care Homes for Older People, the latter of which the Care Inspectorate introduced on 30 July 2018. Protocols should be clear to staff who are responsible for responding to individual circumstances where a supported person's care requirements may have suddenly changed due to a crisis in their situation, for example because of the onset of an acute illness, or the death of a main carer.

### **Training**

30. Local authorities and other organisations should ensure that staff training and development is given a high priority on joint training agendas for those staff involved in the assessment and planning process.

### **Clarity of information**

31. Local authorities will need to be clear in their local policies and priorities. As part of their on-going public information strategies, local authorities should make explicit that a contribution towards a supported person's care costs will be set according to the requirements that are identified at the time of the practitioner's assessment and will be in line with local protocols.
32. Local authorities will also need to provide clear information on what constitutes personal care, on criteria for eligibility for services and on the range, level and frequency of service provision.
33. Local authorities should also consider how a supported person who currently privately arranges their care can be provided with information about how to request an assessment which may act as a passport to receiving free personal care.



### 3. CHARGING AND INCOME MAXIMISATION

**This section of the guidance covers all non-residential care and support services where personal care is offered**

#### Care at Home Services

1. Under the provisions of the 2002 Act, and the 2002 Regulations local authorities will no longer be able to charge adults for the personal care element of care at home services.
2. Other, non-personal care such as personal alarms, remains chargeable and local authorities will need to provide clear information to supported people and their carers on their charges for care at home services.
3. Although the 2002 Act provides powers for the Scottish Government to regulate charging for non-residential care services, the Scottish Government has not exercised this power. This enables local authorities to set charges taking into account local circumstances, and supporting local accountability. COSLA's National Strategy & Guidance, Charges Applying to Non-residential Social Care Services, is published on its website at [www.cosla.gov.uk](http://www.cosla.gov.uk).

#### Financial Assessment for those receiving Care at Home

4. Prior to the implementation of the extension of free personal care, local authorities will put in place a process which identifies personal and non-personal care.
5. Local authorities must ensure they do not take for granted the care contribution currently being made by an unpaid carer, and that any reassessment takes account of the amount of care an unpaid carer is willing and able to provide.<sup>2</sup>
6. Once the level of non-personal care has been identified, local authorities should calculate the revised charge by applying this to their charging regime. It is recognised that the scale of this process will vary between local authorities and decisions may need to be taken by each local authority on how best to undertake this task. However, it must be stressed that all charges for personal care will cease from 1 April 2019.

#### Providing Information on Charging Policies

7. All local authorities must provide clear information on their charging policies. This will help supported people, their carers and their families understand how their charges are calculated and how the local authority will collect the charges.
8. Information on their policies for waiving and abating charges, how to apply for these and the method used to consider such requests and review the decisions of the local authority should also be included in the material. Information on the local authority complaints process should also be provided and details of how to contact the [Scottish Public Services Ombudsman](#) (SPSO) if unsatisfied with a decision made by the local authority.

#### Income Maximisation

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<sup>2</sup> <http://www.legislation.gov.uk/asp/2016/9/contents>

9. Local authorities are recommended to continue to operate income maximisation services and to continue investing in staffing resources, publicity material, IT systems and training.

**This section of the guidance covers care home services where personal care is offered.**

### **Financial Assessment for those in Care Homes**

10. The existing care home charging and financial assessment arrangements under the National Assistance Act 1948 and the National Assistance (Assessment of Resources) Regulations 1992 (as amended for Scotland) will remain in place with the exception of free personal and nursing care. Guidance on charges for those residing in Care Homes can be found at Charging for Residential Accommodation Guidance.
11. The local authority contribution to the supported person's total care home costs will continue to take account of the provisions of the 2002 Act and the regulations made under that Act. In practice there will be 3 main cases as follows:
  - a) *People who currently receive care funded by the local authority and contribute only their state pension and benefit income;*
  - b) *People who currently receive care supported by the local authority but who contribute a greater amount, from sources in excess and out with their income which may include their state pension, tariff income, income from capital between the lower and upper capital limits or other income such as occupational pension;*
  - c) *People who currently fund their care home fees in full because they have capital over the upper capital limit.*
12. Where following the financial assessment, the local authority contribution to the total care home costs of people **without** nursing care is less than the sum specified in the 2002 Regulations, as amended from time to time, it will need to be increased to the amount provided for in the regulations.
13. Similarly, where the local authority contribution to the total care home costs of those needing personal **and** nursing care is less than the sum specified in the 2002 Regulations, it will need to be increased to the sum specified in the 2002 Regulations.
14. Those who fund their care home fees in full may receive free personal and nursing care payments however they will need to request an assessment to be carried out. If the assessment finds the person eligible for personal care and/or nursing care, this will be provided directly to the care home.

## **4. CONTRACTS**



1. This Guidance cannot cover all the potential issues that may arise around contractual arrangements or provide information on the ongoing work around contracts. In practice, there will be a number of contractual matters that will require clarity. As a general rule, these issues should be resolved locally.

## Care at Home

2. The 2013 Act puts a duty on the local authority to provide 4 options to all adults eligible for support or provided with services at home.
3. The options are intended to provide a framework in which a local authority can meet its social welfare and wellbeing duties relating to adults in a flexible and creative way.
4. The 2013 Act provides 4 options for contractual arrangements for supported people, local authorities and provider agencies in relation to payments for personal care at home. Supported people must be able to choose which option they wish to take. This will require flexibility in approach from local authorities and voluntary and independent care providers.
5. These options should also be open to the supported person for their personal care requirements. For more detail on these options please refer to the Statutory guidance which accompanies the [2013 Act](#).

## Care Homes

6. The extension of free personal and nursing care to adults under age 65 will require local authorities to put in place contractual arrangements for those who under current financial assessment arrangements would not qualify for public sector support towards their care home services. Supported people under the age of 65 would not have previously been included in the existing arrangements between local authorities and the voluntary and independent care sectors. People who are self-funders may also decide at any time to apply to local authorities for an assessment of eligibility for free personal care.
7. Current contractual arrangements between local authorities and provider agencies are complex and varied, particularly those providing care home services. For further information relating to contracts please refer to Competition and Marketing Authority's (CMA) Guidance on unfair contract terms at [Unfair contract terms: CMA37](#). Other information on the CMA's consumer protection powers can be found in [Consumer protection enforcement guidance: CMA58](#).
8. The CMA carried out a market study into care homes for the elderly, to review how well the market works and if people are treated fairly. The [CMA has published consumer law advice for care home providers which has been produced with the involvement of the care sector, COSLA and the Scottish Government](#) to help care homes to meet their obligations under consumer law.

## Routes for contractual arrangements

9. Supported people must be able to choose how their care home services are arranged, whether by arranging directly themselves, or with the assistance of their local authority. This will require flexibility in approach from local authorities and voluntary and independent care providers. Please refer to the current Guidance on Charging for Residential Accommodation issued by the Scottish Government as an annual circular.

### **Information for supported people**

10. Section 9 of the Social Care (Self-directed Support) (Scotland) Act 2013 provides that, where a local authority has given a supported person an opportunity to choose one of the options for self-directed support it must give the supported person an explanation of the different options along with information about how to manage support. In addition, the local authority must provide information about organisations who can help the supported person understand what care and support is available, help them make decisions about the options and provide information on how to manage support. Such organisations include those providing voluntary sector independent support.
11. Local independent support organisations can be found through the “Get help” button on Self Directed Support Scotland’s website: <https://www.sdsscotland.org.uk/>. Scottish Government has funded 30 independent support services until 2021, and others are funded by local authorities or run on a voluntary basis by supported people.
12. Many voluntary sector organisations for disabled people and older people can also offer advice through websites or phone lines. The following websites provide this information and further signposts:
  - Care Information Scotland
  - Age Scotland
  - Alzheimer Scotland
  - Scottish Government



## 5. PAYMENT MECHANISMS

1. All local authorities have in place payment mechanisms for both care at home and care home care and these should be indicative of self-directed support payment mechanisms, which can be found in the 2013 Act [guidance](#).
2. Each payment mechanism will involve a range of systems including:
  - a contract or agreement with the supported person, or private and voluntary sector agency about the use of money;
  - billing systems/invoices; and
  - payment of the money into relevant bank accounts, either personal or agency.

### Ordinary Residence

3. Where a supported person has been assessed as needing personal and/or nursing care by a local authority under section 12A of the [1968 Act](#), and the care is provided under this Act, the supported person cannot be charged for the care covered by section 1 of the [2002 Act](#).
4. The costs of providing free personal and nursing care services to a supported person who is ordinarily resident in another local authority area can be recovered from that other local authority.

### Cross-border placements

5. Scottish local authorities will occasionally make arrangements for supported people who are ordinarily resident in their area to be placed in care homes in England, Wales or Northern Ireland. In such circumstances the supported person will be eligible for personal and nursing care payments from the Scottish placing local authority. Placements in Scotland of people ordinarily resident in local authority areas in England, Wales and Northern Ireland will not be eligible for personal and nursing care payments. Funding responsibility for such placements rests with the English, Welsh or Northern Ireland placing local authority. It is important to note that there are established UK wide principles determining "ordinary residence" and these continue to apply in respect of funding responsibility for personal and nursing care payments. Further information on this is provided in the published guidance [CCD3/2015](#).

### Hospital admission

6. When a supported person is admitted to hospital from a care home, the local authority will continue to make personal and nursing care payments at full rate for 2 weeks after admission. When a supported person is admitted to hospital from their own home and is receiving direct payments for their personal care, the local authority will continue to make payments for personal care for 2 weeks after admission.

### Supported people who have privately contracted to pay for more service than they have been assessed as needing

7. Staff in local authorities, particularly those involved in care and finance assessments, should understand clearly that payments for nursing care and/or personal care can only

be made on the basis of the assessment which sets out the services that the supported person needs.

8. If the supported person has already agreed or in future agrees to a more comprehensive or a greater package of care than the assessor decides is required, either in their own home or in a care home, the supported person can pay for that service from their own resources, in a separate financial arrangement with the independent sector provider. This applies both to care home and care at home arrangements.
9. Supported people living in their own homes in the community are not eligible for nursing care payments.

### **Start date of payments and retrospective payments**

10. Payments will commence once the personal and/or nursing care service is being provided or when the supported person moves into a care home and is provided with personal and/or nursing care. It does not start before and will not be backdated for example, to the date of referral or assessment.
11. People who fully fund their own personal care services will be required to contact their local authority to arrange an assessment to confirm whether they are eligible for free personal care, if they wish to receive the benefit of free personal care.

### **Free home care for up to 4 weeks after discharge from hospital**

12. Under existing arrangements, supported people are entitled to up to 4 weeks free home care (covering personal and non-personal care) after discharge from hospital. The extension of free personal and/or nursing care will make no difference to these arrangements.

### **Opting in/out of the payment system for personal care and/or nursing care**

13. It is the supported person's responsibility to approach the local authority if they want to seek public sector support for their care costs. If a supported person is resident in a care home and is in receipt of Attendance Allowance or receives the care components of Disability Living Allowance, Universal Credit or Personal Independence Payment, they must notify the Department for Work and Pensions accordingly so these can be stopped in accordance with the rules.
14. It is the responsibility of the local authority to make payments to provider agencies and supported people. Service providers can notify the local authority on behalf of existing people who are self-funders provided the person agrees. With new applications for payments, it is the responsibility of the supported person or someone acting on their behalf and with their consent to ask for an assessment. This can be a carer, advocate or provider.

### **Payments for short-term nursing care and personal care**

15. There may be occasions where a supported person needs to have personal and/or nursing care on a short-term basis:

- for respite care;

- in an emergency or crisis, for instance if a carer or relative is suddenly taken ill and is unable to look after the supported person; and
- for a trial period - to explore whether they would prefer to move into a care home on a permanent basis.

16. For these short-term requirements, local authorities should satisfy themselves that the supported person's care is being properly met. Payments for personal and/or nursing care should be paid on the basis of the records kept either by the local authority or the care home which should indicate the level of need. A guiding principle here should be that the supported person should not be treated any less generously under these arrangements than they would otherwise have been.

### **Temporary absence from free personal and/or nursing care**

17. There may be occasions when a supported person requires to be hospitalised or is placed in another form of care and therefore receives care financed from other public funds.
18. On these occasions the care provider has a duty, as soon as reasonably practicable (but in any event no later than the next working day) inform the local authority.
19. The local authority will continue to pay the contract of care for a period of 14 days from the commencement of the supported person's absence, with day 1 being counted as the day the supported person is moved to another form of care.



## 6. Monitoring and Analysis

1. Monitoring and analysis of the extension of free personal care will be carried out by the Scottish Government. Monitoring of the extended policy of free personal care to adults will commence from 1 April 2019. Arrangements by local authorities will require to be put into place to carry out this monitoring and analysis. The monitoring and analysis will not cover issues such as contract compliance as this should continue to be undertaken according to locally agreed practice.
2. This monitoring and analysis will help to identify the impact of the extension of free personal care, which will inform future budgets and development of the policy.



# Community Care and Health (Scotland) Act 2002

[ANNOTATED EXTRACT]

## Part 1 Community Care

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

(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 schedule 12 paragraph 20 of the Public Services Reform (Scotland) Act 2010 [*“personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash)*];

(b) personal support as also defined in Schedule 12 paragraph 20 of the 2010 Act [*“personal support” means counselling, or other help, provided as part of a planned programme of care*];

(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 Accommodation provided under 1968 Act etc.

For the purposes of the definition of “social care” in section 22(1) and (2) of the 2002 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 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 section 25 of the 2003 Act (provision of care and support services etc for persons who are or have been suffering from mental disorder).

## Part 4 General

### 22. Interpretation

(1) In this Act

(A) “the 1948 Act” means the National Assistance Act 1948 (c.29); “the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49); “the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); and

(B) “social care” means, subject to subsection (2) below, a service provided (a) under the 1968 Act; or

(b) under section 25 (care and support services for persons who have or have had a mental disorder) or 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.

to an individual by a local authority or a service the provision of which to an individual, under the 1968 Act or 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).





# THE COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

## Schedule 1

### Social Care Not Ordinarily Charged For

*[Whether or not personal care (see section 1(1)(a) or personal support (see 1(1)(b))]*

- 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 and 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.
  
- 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.

- 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.
  
- 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.

*[Counselling, or other help, provided as part of a planned programme of care is explicitly included within the definition of personal support (see 1(1)(b)]*



# THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

## Schedule 12, Section 20

### Care Services: Definitions

In this schedule, unless the context otherwise requires –

“someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;

“vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person –

- (a) being affected by infirmity or ageing;
- (b) being, or having been, affected by disability, illness or mental disorder;
- (c) being, or having been, dependent on alcohol or drugs; or
- (d) being of a young age;

“personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

“personal support” means counselling, or other help, provided as part of a planned programme of care.