SCOTTISH STATUTORY INSTRUMENTS

2002 No. 533

SOCIAL CARE

The Community Care (Joint Working etc.) (Scotland) Regulations 2002

Made - - - - 29th November 2002

Laid before the Scottish Parliament

Coming into force - - 1st January 2003

The Scottish Ministers, in exercise of the powers conferred by sections 13(1), 14, 15(1), (2) and (4), 17(1)(a)(i) and (ii) and 17(1)(b)(ii), of the Community Care and Health (Scotland) Act 2002(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Care (Joint Working etc.) (Scotland) Regulations 2002 and shall come into force on 1st January 2003.

(2) In these Regulations–

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

"local plan" means any plan made by, affecting or involving the participation of a local authority or NHS body (whether in common with any other person or not) which relates to any of the functions prescribed by these Regulations;

"arrangement" means any arrangement under section 15(1) of the Act;

"party" means any local authority or NHS body which participates or proposes to participate in an arrangement.

Payments by NHS bodies towards certain local authority expenditure

2.—(1) The functions prescribed for the purposes of section 13(1) of the Act (payments by NHS bodies to local authorities) are such functions of a local authority as are specified in Schedule 1.

(2) The conditions prescribed for the purposes of section 13(1) of the Act are–

(a) the NHS body shall before making a payment under section 13(1) of the Act be satisfied–

(**1**) 2002 asp 5. See section 22(1) for the definition of "prescribed" and section 23(3) as to the power to make regulations.

(i) that the proposed payment is likely to secure more effective use of resources than applying the equivalent amount on the provision by it of services in performance of any functions to which regulation 3 applies;

(ii) that the proposed payment is consistent with any local plan which relates to the function in respect of which the payment is to be made;

(iii) that, if the proposed payment is intended to meet or be applied towards capital costs in relation to the performance of any function to which this regulation applies, the amount of that payment shall be determined by it and the local authority before those costs are incurred; and

(iv) that the local authority to which the proposed payment is to be made intends to meet the balance of costs incurred or to be incurred in the performance of the function in respect of which the payment is to be made for so long as the NHS body and local authority consider necessary or desirable; and

(b) the NHS body and local authority shall enter into an agreement in writing in relation to the performance of the function and the payment and such agreement shall include terms as to–

(i) the function or functions which are the subject of the agreement;

(ii) the specific objectives which the payment is intended to help secure and how the attainment of those objectives is to be measured;

(iii) the establishment and operation by the local authority of systems of monitoring, accounting and audit in respect of the payment and performance of the function in respect of which it is to be applied;

(iv) the provision to the NHS body by the local authority of audited accounts of expenditure against payments received at such intervals as may be agreed;

(v) variation of the amount of payment by the NHS body as a result of any variation in the level of service provided by the local authority in performance of the function in respect of which the payment is made; and

(vi) consequences for the agreement where, in the event that the agreement is made in respect of the costs of acquiring land or buildings, such land or buildings are used for a purpose other than that for which the payment is made.

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

3.—(1) Subject to paragraph (2), the functions prescribed for the purposes of section 14 of the Act (payments by local authorities to NHS bodies) are specified in Schedule 2.

(2) A function so specified shall not include one whose performance involves the provision of emergency ambulances.

(3) The conditions prescribed for the purposes of section 14 of the Act are–

(a) the local authority shall before making a payment under section 14 of the Act be satisfied–

(i) that the proposed payment is likely to secure more effective use of resources than applying the equivalent amount on the provision by it of services in performance of any functions to which regulation 2 applies;

(ii) that the proposed payment is consistent with any local plan which relates to the function in respect of which the payment is to be made;

(iii) that, if the proposed payment is intended to meet or be applied towards capital costs in relation to the performance of any function to which this regulation applies, the amount of that payment shall be determined by the local authority and the NHS body before those capital costs are incurred; and

(iv) that the NHS body to which the proposed payment is to be made intends to meet the balance of costs incurred or to be incurred in the performance of the function in respect of which the payment is to be made for so long as the local authority and NHS body consider necessary or desirable; and

(b) The local authority and NHS body shall enter into an agreement in writing in relation to the performance of the function and the payment and such agreement shall include terms as to–

(i) the function or functions which are the subject of the agreement;

(ii) the specific objectives which the payment is intended to help secure and how the attainment of those objectives is to be measured;

(iii) the establishment and operation by the NHS body of systems of monitoring, accounting and audit in respect of the payment and performance of the functions in respect of which it is to be applied;

(iv) the provision to the local authority by the NHS body of audited accounts of expenditure against payments received at such intervals as may be agreed;

(v) variation of the amount of payment by the local authority as a result of any variation in the level of service provided by the NHS body in performance of the function in respect of which the payment is made; and

(vi) consequences for the agreement where, in the event that the agreement is made in respect of the costs of acquiring land or buildings, such land or buildings are used for a purpose other than that for which the payment was made.

Functions prescribed for the purposes of section 15(2)(a) of the Act

4. The functions prescribed for the purposes of section 15(2)(a) of the Act (local authority functions prescribed for joint working) are specified in Schedule 3.

Functions prescribed for the purposes of section 15(2)(b) of the Act

5.—(1) Subject to paragraphs (2) and (3), the functions prescribed for the purposes of section 15(2)(b) of the Act (NHS body functions prescribed for joint working) are specified in Schedule 2.

(2) A function so specified shall not include one whose performance involves–

(a) surgery, radiotherapy, termination of pregnancies, endoscopy, the use of class 4 laser treatments, and other treatments of an invasive nature; or

(b) the provision of emergency ambulances.

(3) Functions under section 36 of the 1978 Act shall not include functions in relation to state hospitals.

Consultation

6.—(1) No less than 8 weeks prior to the commencement of a proposed arrangement, the parties shall jointly–

(a) publicise the arrangement which they propose to enter into by placing an advertisement, in accordance with paragraph (2), in a daily or weekly newspaper circulating in the area in which it is proposed the arrangement will operate; and

(b) consult, in such manner as the parties consider appropriate, such persons or classes of persons in the area in which the arrangement is proposed to operate, who, in the opinion of the parties, are likely to be affected by such arrangement.

(3) The advertisement required by paragraph (1) shall–

(a) contain details of the arrangement which is proposed;

(b) contain an address to which representations in respect of the proposed arrangement may be made; and

(c) identify a date, no less than 8 weeks from the date on which the advertisement appears, before which representations may be made.

Consistency of arrangement with local plans

7.—(1) This paragraph applies where a local plan relates to any of the functions specified in regulation 4 or 5 as the case may be.

(2) Where paragraph (1) applies, an arrangement shall be consistent with the local plan.

Requirements relating to affected employees

8.—(1) This paragraph applies where a proposed arrangement affects employees of either party.

(2) Where paragraph (1) applies, the parties to the proposed arrangement shall jointly–

(a) consult the affected employees on the arrangement and the way in which the employees will be affected by it;

(b) give notice to the affected employees, in advance of commencement of the arrangement, of its terms, including–

(i) its commencement date;

(ii) its duration;

(iii) how they will be affected by it;

(iv) the grievance or other dispute resolution procedures which will be available to them in relation to the arrangement; and

(v) any other matters as appear to the parties to be appropriate; and

(c) afford the affected employees an opportunity to make representations to the parties.

Agreement in writing

9. An arrangement shall be made by agreement in writing between all the parties.

Composition and management of fund established under section 15(1)(c) of the Act

10.—(1) A fund established and maintained under section 15(1)(c) of the Act (funds in furtherance of joint working) shall be composed of payments from at least 2 contributors, one of whom shall be a local authority and one of whom shall be an NHS body.

(2) The contributors to a fund established and maintained under section 15(1)(c) of the Act shall jointly nominate one contributor to exercise the functions set out in paragraph (3).

(3) The functions referred to in paragraph (2) are–

(a) holding the fund;

(b) preparing and maintaining financial accounts in respect of the fund;

(c) preparing the following–

(i) quarterly reports on payments into and out of the fund;

(ii) an annual return;