



SCOTTISH EXECUTIVE

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Directorate of Health Policy

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Dear Colleague

Free Personal and Nursing Care – Consolidated Guidance

This circular consolidates guidance circulars CCD4/2002 – Implementation of Free Personal and Nursing Care Guidance and CCD5/2002 – Free Personal and Nursing Care Route 2 Contract Guidance, issued to local authorities, the NHS and other service providers on 12 April and 30 May 2002 respectively.

We hope this will ease reference and intend to further review the consolidated guidance later this year when monitoring of the first year of free personal and nursing care has been completed.

It has come to our attention that a few queries have been raised in respect of the route 2 model contract and that some local authorities and providers are encountering difficulties in reaching agreement in respect of some of the clauses within that contract.

The main point of contention appears to be clause 14.4 which states "The Council will continue to pay the Contract Price for a period of fourteen days from the commencement of the Resident's absence from the Home." The view of the Scottish Executive is that, although not specifically provided for in primary legislation or regulations, it would be open to the provider to have a clause within their contract with the resident which indicates that where a resident is temporarily absent from the Home the resident will become responsible, from day fifteen of that absence, for the full cost of their care.

Other clauses causing concern are 17.1, 22.1 and 25 which cover user agreements, variations and the entire contract respectively. The concern appears to be that these clauses encroach on the providers' ability to review their fees. As these clauses only apply to the free personal and nursing care element of the care package they do not mean that the provider cannot charge more for extra services. Clause 22.1 specifically only regulates how a change to the contract is made, not what the effect of the change is. In respect of clauses 17.1 and 25, in the case of conflict, the model contract should prevail.

It is a matter for the local authority and the provider to reach a mutually acceptable contract. The Scottish Executive cannot intervene in that process. In that connection, local authorities will wish to consider taking appropriate internal legal advice in relation to any areas of particular concern. However, where a contract cannot be agreed, for reasons unrelated to the quality of personal care being provided and where a resident has applied and is eligible for free personal/nursing care, local authorities may find it difficult to resist claims for payment by the care provider. It is for the individual local authority to decide how best to comply with the regulations and guidance.

While not provided for in primary legislation or regulations, on the basis of the previously issued circular CCD5/2002 "Free Personal and Nursing Care Route 2 Contract Guidance" and the current consolidated guidance, the local authority is not obliged to pay this element where a temporary absence from the care home exceeds fourteen days. The local authority (and preferably also the provider) should make this position clear to individual recipients of care at the outset.

All enquiries relating to this circular should be addressed to Anne Hampson at the above address. Further copies are available by telephoning George Whitton on 0131 244 5403 or by email to:

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The circular is also available at <http://www.show.scot.nhs.uk/sehd/ccd.asp> and on the Free Personal Care website www.scotland.gov.uk/health/freepersonalcare

Yours sincerely

T S Teale

MISS T S TEALE

FREE PERSONAL AND NURSING CARE IN SCOTLAND

GUIDANCE FOR LOCAL AUTHORITIES, THE NHS AND OTHER SERVICE PROVIDERS

July 2003

(Electronic version – www.scotland.gov.uk/health/freepersonalcare)

GUIDANCE ON FREE PERSONAL AND NURSING CARE IN SCOTLAND

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1. INTRODUCTION

1. This circular gives guidance on the action required to implement the Scottish Executive's policy on personal and nursing care from 1 July 2002.

Background

2. On 24 September 2001, Scottish Executive Ministers announced their intention to implement in full the recommendations of the Care Development Group (CDG). Copies of the CDG report were circulated at that time to local authorities, NHSScotland and other organisations and interests. Additional copies of the Report and the Executive Summary are available by contacting Community Care Division 1 at the above address or through the free personal care website www.scotland.gov.uk/health/freepersonalcare.

3. It was also announced that an Implementation Steering Group (ISG) would be established to advise on delivering the new policy across Scotland. This guidance has been prepared by the ISG working with local authorities and through CoSLA, ADSW and established groups within those organisations.

Legislative Process

4. The Community Care and Health (Scotland) Act 2002 provides the legislative backing for implementing free care. The Act and explanatory notes are available through HMSO or on www.scotland-legislation.hmso.gov.uk. The Act requires that personal and nursing care shall no longer be charged for and sets out specific types of care that are not to be charged for, based wholly on the recommendations of the Care Development Group. The Act also enables Ministers to set out in regulations detailed provisions concerning the delivery of free care, including making clear who will be eligible.

5. The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002 and The Community Care (Assessment of Needs) (Scotland) Regulations 2002 were prepared by the Scottish Executive to bring the provisions on personal and nursing care into effect on 1 July. These regulations together with the provisions of the Act itself (an annotated extract is at Annex A) provide the legislative basis for the delivery of the Executive's policy on free personal and nursing care.

Implementation

6. Implementation can be put into 2 broad categories:

Care in care homes - arrangements for flat rate payments for personal care for those aged 65 and over in care homes who currently meet their own care costs and flat rate nursing care payments both for over and for under 65s in nursing homes who currently meet their own care costs.

Care at home - arrangements for adjusting local authority systems for home care charging to individuals to take account of free personal care.

The key aspects of the policy are:

For those living in their own home

Free personal care is available to those aged 65 and over.

All eligibility for free personal care is subject to an assessment of need by the local authority.

No local authority charge will be made for such personal care services after 1 July 2002.

Eligibility for free personal care is made irrespective of income, capital assets, marital status or the care contribution currently made by an unpaid carer.

Non personal care services will continue to be subject to charges at the discretion of the local authority.

Eligibility for and payment of Attendance Allowance and Disability Living Allowance are not affected by the introduction of free personal care.

For those living in care homes

The provision of payments towards nursing and personal care will apply to those who pay their own care costs (self-funders).

Transitional arrangements will apply for those already in residential or nursing homes on 31 March 2002. For those people no assessment of need will be required and they will be eligible for a payment of £145 for personal care and if receiving nursing care of a further £65 per week.

For those self-funders entering a care home after 31 March 2002, an assessment of need will be required before they become eligible for personal or nursing care payments at the rates above.

Self-funders will continue to pay the remainder of their own costs, often described as living or accommodation costs.

Attendance Allowance and Disability Living Allowance (care component)

7. There has been considerable coverage about the effect that receipt of free personal care will have on Attendance Allowance and the care component of Disability Living Allowance. It is important that there is clarity about this. Social security benefits legislation provides that where an individual receives funding towards the cost of their place in a care home from a public source, payment of Attendance Allowance and the care component of Disability Living Allowance must cease 4 weeks after the funding starts. Some 25,000 people in care homes in Scotland who are currently being funded through their local authority are already affected in this way and are not paid Attendance Allowance or the care component of Disability Living Allowance.

8. The people whose Attendance Allowance and Disability Living Allowance (care component) payments will be affected by receipt of free personal care are:

(i) the 7,500 self-funders currently aged 65 and over in care homes in Scotland and self-funders in care homes in Scotland who reach age 65 on or after 1 July 2002. At present, they meet the whole costs of their place in the care home entirely from their own resources, do not receive any local authority funding and are paid Attendance Allowance or the care component of Disability Living Allowance;
and

(ii) people aged 65 and over receiving Attendance Allowance or the care component of Disability Living Allowance who enter a care home on or after 1 July 2002.

9. Where any of the people mentioned in paragraph 8 receive personal care payments on or after 1 July 2002, payment of their Attendance Allowance or Disability Living Allowance (care component) must cease 4 weeks later. It is their responsibility to report receipt of personal care payments to the Department for Work and Pensions as soon as they start to receive it. 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.

Receipt of free nursing care by anyone of any age in a care home will **not** affect their Attendance Allowance or Disability Living Allowance.

Action required by local authorities

10. This guidance sets out the key actions required by local authorities 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.

Public Information

11. The Scottish Executive ran a public information campaign through national and local press from late April to late June 2002. Local authorities will be the main point of contact for local enquiries and will therefore wish to prepare staff accordingly.

2. ELIGIBILITY

Needs Assessment

1. The Care Development Group made clear in its report that all eligibility for free personal and nursing care should be subject to an assessment of care needs arranged by the local authority except where transitional arrangements should apply for those already in residential and nursing homes on 31 March 2002. These transitional arrangements are set out in paragraphs 15 and 16 below.

2. This section focuses on the needs assessment arrangements local authorities have in place for assessing the community care needs of individuals. The guidance here should also be read in conjunction with related Scottish Executive Guidance on Assessment and Care Management (SWSG 11/91 and SWSG 10/98) and Single Shared Assessment (CCD 8/2001). Any reference to needs assessment should be understood in the context of the implementation of single shared assessment, which aims to ensure the needs of individuals are identified as quickly and effectively as possible. Individual care needs assessments should be distinct from any financial assessment, which is addressed separately in section 3 of this guidance.

3. The underpinning principle for identifying individual needs is to plan care in the best possible way in order to meet the person's care needs. Authorities should therefore continue to foster a 'needs-led' approach when responding to referrals and applications for funding. In other words in order to receive a payment for personal care the individual's needs must have been assessed in order to ascertain whether the personal care in place is the most appropriate. Authorities will need to be clear in their local policies and protocols that funding for personal care will only be available for individuals whose needs have been assessed. Local authorities must assess the overall needs of the individual, and should not take for granted care being provided by an unpaid carer. From September 2002, the Community Care and Health (Scotland) Act 2002 will require local authorities, following an assessment of needs, to take account of the views of the individual and their carer, as well as the care the carer is willing and able to provide, before deciding what services to provide to the individual.

Care at Home

4. From 1 July 2002, local authorities will be responsible for making payments, or not charging for, the personal care element of care at home. 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 at home should build on these mechanisms.

5. Authorities will already know the identified needs and services in place for existing service users in their areas who are receiving care at home. There will be systems in place for monitoring and reviewing individual needs and there is no reason why the implementation of the Executive's policy on personal care should require re-assessments of need for existing service users unless individual cases require this. Action will be required however to determine the personal care element the individual is receiving, either to ensure they are not charged for it or to make arrangements for a payment towards their care. Guidance on payment mechanisms is set out in section 5.

6. Local authorities should therefore provide clear guidance for staff on what constitutes personal and non-personal care including the levels and frequency of tasks related to personal care.

7. Local authorities and the NHS will have agreements in place on how personal care services are provided locally and by whom. The implementation of free personal care should fit with these arrangements.

Definition of Personal Care

8. Sections 1 and 2 and Schedule 1 of the Community Care and Health (Scotland) Act 2002 (annotated extract at Annex A) and the regulations that will be made under the Act provide that personal care, as recommended by the Care Development Group, shall be provided free by local authorities to those aged 65 and over who need it.

9. In legal terms, the CDG's definition of personal care covers both personal care and personal support (as defined in the Regulation of Care (Scotland) Act 2001). The Community Care and Health (Scotland) Act 2002 therefore 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 Act (even if they would not be classified as personal care or support under the terms of the Regulation of Care (Scotland) Act 2001).

10. These guidelines offer further explanation of the components of personal care and should be read in conjunction with the relevant legislative provisions.

Personal Hygiene

Help with washing as well as bathing and showering is included.

Continence Management

Help with the use of continence equipment is included.

Problems of Immobility

Only care provided to deal with the effects of immobility which directly meets **personal care** needs as defined in the Community Care and Health (Scotland) Act 2002 is included (ie personal hygiene, continence management, eating, simple treatments and personal assistance tasks).

Food and Diet

Food preparation and provision of meals are not included. However assistance with eating, assistance to manage special diets and the assistance with the preparation of specialist meals (eg pureed foods) is included.

Simple Treatments

Assistance with tasks in this component will continue to be in line with any local agreements defining task responsibilities of health and care at home staff.

Personal Assistance

Help to move about indoors is included.

Equipment & Adaptations

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 individuals to manage their own personal care needs are included (eg the use of personal reminder systems to allow individuals 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.

The development of technology in this area is expanding rapidly, as recognised by the Care Development Group. This will be kept under review by the Scottish Executive in relation to Supporting People, Joint Future developments and the work of the Strategy Forum: Equipment and Adaptations. Further guidance will follow later this year.

Interface with Supporting People

11. Supporting People is a framework that will provide housing support services to a wide range of vulnerable people in ways responsive to their needs when it is introduced in April 2003. From that date, housing support services will include any service which provides support, assistance, advice or counselling to an individual with particular needs to enable that individual to occupy or continue to occupy as the person's sole or main residence, residential accommodation other than excepted accommodation. Excepted accommodation is defined in the Housing (Scotland) Act 2001 as accommodation, or accommodation of a type, specified as such in regulations made by Scottish Ministers.

12. In practice, however, in many cases these services are being provided as part of a package of care. This package may include some services which are personal care and others which are non-personal care services and may include a wide range of different services provided by landlords to their tenants. The main areas where there is close linkage between housing support services and personal care are counselling and support, behaviour management and assistance with personal safety. For the purposes of identifying the elements of personal care which should be free, local authorities should **exclude** all services illustrated as eligible for transitional housing benefit in DSS circulars: A47/99, A8/2000 (Scotland), A10/2000, A10/2001, A47/2001 and Supporting People Consultation Paper on the Definitions of Housing Support Services available at <http://www.scotland.gov.uk/housing/supportingpeople>. Similarly local authorities should exclude services which are part of a housing support plan or are offered as a condition of tenancy - ie warden services.

13. The Scottish Executive will be preparing regulations to define prescribed housing support services coming under the remit of Supporting People from 1 April 2003. Further guidance will be issued later this year.

Residential/ Nursing Home Care

14. From April 2002 Residential and Nursing Homes will come under the umbrella term: 'Care Home'. Local authorities will not be required to assess the needs of older people who were in a care home on a privately funded basis on or prior to 31 March 2002. The transitional arrangements set out below will apply for these people. However, after this date, everyone who applies for payment towards their care in a care home will require to have a comprehensive needs assessment

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 person's needs could easily be met in their own home. In order to avoid disappointment as far as possible for individuals and their families, 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.

Transitional arrangements for those in residential and nursing homes on 31 March 2002.

15. The Scottish Executive accepted the Care Development Group's recommendation that all those aged 65 and over who currently pay their own care costs (self-funders) in residential and nursing homes from a set date should not require to have their care needs assessed by the local authority to access free care. There are approximately 7,500 people in this category at any one time across Scotland. If these individuals wish to seek the flat rate payments towards their care costs they will have to notify the local authority in which they are resident. Those in residential homes at 31 March 2002 will be entitled to the flat rate payment of £145 per week from 1 July 2002. Those in nursing homes on 31 March 2002 will be entitled to the personal care payment and the flat rate nursing care payment of £65 making a total of £210 per week.

16. The public information campaign will target these individuals as well as the wider public, care recipients and their carers. However, local authorities will also wish to:

- take steps to identify the numbers of self-funders in their areas; and
- advise self-funders who enquire about/apply for free personal care about the effect that receipt of free personal care will have on their Attendance Allowance or Disability Living Allowance (care component) payments.

For the convenience of the individual and to ensure that the Department for Work and Pensions is given the information it requires, a standard form may be used by local authorities. An example proforma is at Annex B.

17. The introduction of free personal and nursing care will not change the existing residential care charging arrangements 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

18. 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. Many authorities will have these in place already and there is no requirement on authorities to change these arrangements. Following a needs assessment, payment towards personal care should commence when the authority is in a position to arrange or provide the required services. It is important that people receive services on the basis of prioritising the care needs of older people rather than on individuals' ability to pay.

Individuals currently receiving care at home services via their local authority

19. In preparation for the implementation of this policy, local authorities will need to agree with individuals currently receiving care at home services the level of personal care and non personal care they receive in their service. Whilst a reassessment of care needs 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 individual is currently paying for their care package. Guidance on charging is set out in Section 3.

Individuals currently arranging their own services for care at home

20. Individuals who currently arrange their own services and who wish to access free personal care will only be able to do so following an assessment of care need 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 these individuals should also be prioritised in line with local criteria.

21. In some cases when individuals have made private arrangements a needs assessment arranged by the local authority may suggest the individual is receiving services over and above their level of need according to the assessment. In this case local authorities 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.

22. 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

23. Formal monitoring and review systems and time-scales should be in place to respond to the changing care needs of individuals. For those in care homes, these systems should be in line with the national care standards for care homes for older people. Protocols should be clear to staff who are responsible for responding to individual circumstances where the person's needs 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

24. Single shared assessment processes will bring a wider range of staff involvement and skills to these arrangements. Local authorities and other organisations should therefore ensure that staff training and development is given a high priority on joint training agendas.

Clarity of information

25. Local authorities will need to be clear in their local policies and priorities. As part of their ongoing public information strategies, local authorities should make explicit that a contribution towards the costs of personal and nursing care will be set according to the individual's needs that are identified at the time of the practitioner's assessment and be in line with local protocols. Payments will take effect when the local authority is in a position to provide for or arrange the required services.

26. Local authorities will also need to provide clear information on what constitutes personal care, on criteria for eligibility for services and for the range, level and frequency of service provision. Local authorities should also consider how service users who currently privately arrange their care can be provided with information about how to access a

community care needs assessment which may act as a passport to receiving payment for personal care.

3. CHARGING AND INCOME MAXIMISATION

Care at Home Services

1. Under the provisions of the Community Care and Health (Scotland) Act 2002 and the Community Care (Personal and Nursing Care) Scotland Regulations 2002, local authorities will no longer be able to charge individuals aged 65 and over for the personal care element of care at home services from 1 July 2002.
2. Other, non-personal care remains chargeable and local authorities will need to provide clear, good quality information to older people and their carers on their charges for care at home services.
3. The Care Development Group report recommended a greater degree of consistency and transparency in local authorities' charging regimes for non-personal care services. The Community Care and Health (Scotland) Act 2002 provides new powers for the Executive to regulate charging for non-residential care services. At the same time, CoSLA has been developing guidance designed to standardise approaches to charging for non-residential care services for older people across Scotland. Where possible, the new procedures for charging for non-residential care should come into effect alongside the adjustments required to take account of the introduction of free personal care. The Executive has made clear that it will hold its regulatory powers in reserve until CoSLA's work has been evaluated.
4. Consequently, this guidance concentrates on the recommendations for charging for non-personal care and income maximisation policies contained in the CDG report. It does not deal with the implications of the CoSLA policy.
5. This part of the guidance covers all non-residential care services where personal care is offered, such as:
 - care at home services;
 - day care;
 - respite care and shared care; and
 - adult placement services.

The definition of personal care and its interaction with Supporting People are set out in Section 2 of this guidance.

Ending Charges for Personal Care at Home

6. Prior to the implementation of free personal care, local authorities will need to determine the level of personal care and non-personal care for each individual receiving care at home. Local authorities should decide if a full care reassessment is necessary or a review of a person's financial contribution would suffice. Local authorities must ensure that 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. Some local authorities may already separately record details of personal and non-personal care and may be able to use this to adjust charges. All local authorities should ensure that they can split the care package into the personal and non-personal care elements for charging purposes.
7. 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 from authority to authority and they will need to decide how best to undertake the task. However, it must be stressed that all charges for personal care in an individual's home will cease from 1 July 2002.

8. Local authorities should continue to grant individuals up to 4 weeks' free care at home after discharge from hospital as required in circular CCD 2/2001.

Limiting the Charge for Non-Personal Care

9. Many individuals will receive a reduction in their charge as a result of the personal care element being provided free. It is likely that a number of individuals will see no reduction in their charge if they are receiving non-personal care services, particularly where the local authority currently makes a small, capped charge and it is less than the cost of providing the non-personal care.

10. The Care Development Group recommended that nobody should pay more in the short term as a result of the introduction of free personal care. Local authorities must therefore ensure that from 1 July 2002 until at least 31 March 2003 no individual is charged more than they were previously paying, unless a reassessment of their care needs results in an increase in the level of non-personal care service provided.

11. Local authorities must also ensure that any charge for non-personal care does not exceed the cost of providing that service to each individual.

Providing Information on Charging Policies

12. All local authorities must provide good quality information on their charging policies. This will help service users, their carers and their families understand how their charges are calculated and how the local authority will collect them. Information on their policies for waiving and abating charges, how to apply for these and the method used to consider such requests should also be included in the material.

Income Maximisation

13. It is recommended that all local authorities in Scotland put in place income maximisation services. A number of local authorities currently offer an income maximisation service investing in staffing resources, publicity material, IT systems and training.

14. Those authorities yet to develop an income maximisation service should now begin to do so for the forthcoming financial year. Provision for infrastructure costs has been made in the financial settlement and local authorities may wish to use some of this money to fund the necessary set up and running costs. It is also recommended that consultation with authorities already delivering these services should be undertaken and those authorities developing or improving their service should adopt best practice.

Financial Assessment for those in Care Homes

15. The existing residential care 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 following exceptions:

- free personal and nursing care

- the new rules on topping up and deferred payment of care home fees which will also come into effect on 1 July 2002. Separate guidance on these issues will be issued shortly.

16. However, the local authority contribution to an individual's total care home costs will need to take account of the provisions of the Community Care and Health (Scotland) Act 2002 and the regulations to be made under the Act. In practice for those aged 65 and over, 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:*

Such people effectively already benefit from free personal care and the existing financial arrangements will continue.

b) *People who currently receive care supported by the local authority but who contribute a greater amount, from sources including their state pension, tariff income from capital between the lower and upper capital limits or other income such as occupational pension:*

Where, following the financial assessment, the local authority contribution to the total care home costs of people not needing nursing care is less than £145 per week, it will need to be increased to £145. Similarly, where the local authority contribution to the total care home costs of those needing personal and nursing care is less than £210 per week, it will need to be increased to £210.

Where such people are already receiving the equivalent amounts for personal and/or nursing care (ie following the financial assessment, the current local authority contribution to their total care home costs is at least £145 per week for personal care or £210 per week for personal and nursing care) the existing financial arrangements will continue.

c) *People who currently fund their care home fees in full because they have capital over the upper capital limit*

Such people in residential or nursing homes on 31 March 2002 and those entering care homes assessed as needing personal and/or nursing care will receive either £145 or £210 per week.

4. CONTRACTS

1. The introduction of free personal and nursing care 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 costs. Previously, these people would not have been included in the existing arrangements between local authorities and the voluntary and independent care sectors.

2. Current contractual arrangements between local authorities and provider agencies are complex and varied, particularly for residential and nursing homes. Most contracts have a core consistency based on the Scottish guidance on contracting for residential and nursing home care for adults prepared and published by the ADSW Contracts Group in 1996. However, almost all local authorities have developed specific local arrangements to reflect local circumstances and in line with each authority's standing orders.

3. It is recognised that there are a number of contractual issues currently under consideration between local authorities and provider agencies including responsibility for third party contributions, contract compliance, care home fee levels generally and arrangements for 'approved' providers. These negotiations should continue but should not impede the process to put in place arrangements for free personal and nursing care from 1 July 2002. In this respect, the Scottish Executive wishes to see a fair and nationally consistent approach across Scotland to the payment of fees and charges for personal and nursing care.

Routes for contractual arrangements

4. There are 3 routes for contractual arrangements for individuals, local authorities and provider agencies in relation to payments for personal and nursing care in care homes and for personal care at home. Individuals must be able to choose which route they wish to take. This will require flexibility in approach from local authorities and voluntary and independent care providers.

Route 1

The Self-Determined Route

This can be taken for 2 reasons:

- **the individual decides not to apply for personal or nursing care payments, chooses not to have a local authority assessment and enters into a contractual arrangement privately and independently with the provider agency**
- **the individual may apply for personal and/or nursing care payments but be assessed by the local authority as not having a level of need which makes the individual eligible for personal and/or nursing care payments. The individual can choose to enter into a contractual arrangement privately and independently with the provider agency.**

Route 2

The Mutual Route

This route involves the individual applying for personal and/or nursing care payments and being assessed as having a level of need which makes the individual eligible for payments. This route is likely to be for care home provision rather than care at home.

The individual wishes to receive the flat rate payments for personal and/or nursing care but wishes to continue to have or to set up a direct contractual relationship with the provider agency for the other elements of their care - ie the hotel/accommodation/living costs. This route may be chosen because the individual wishes to negotiate and purchase a care package or care home place in a place of their choosing and to their specification ie outwith any existing contractual arrangement the local authority may have with that establishment and does not wish to involve the local authority in their private contractual agreement.

In these circumstances the individual will use 2 contracts, one privately with the provider agency, and the other nationally consistent contract for payments for personal and/or nursing care. This contract will be between the local authority on behalf of the individual and the provider agency and will relate solely to personal and/or nursing care payments. A framework for such a contract is attached as Annex C. Payments for personal and nursing care will be made to the care home not the individual.

Route 3

The Integrated Route

This route involves the individual applying for personal and/or nursing care payments and being assessed as having a level of need which makes the individual eligible for personal and/or nursing care payments.

The individual decides to ask the local authority to manage the contractual arrangements on their behalf.

The local authority will use its normal contract for care services or for care homes but the contract will have an additional nationally consistent annex which relates solely to the personal and/or nursing care payments. This annex would have close similarities with the Route 2 contract outlined in Annex C.

The advantages of Route 3 for the client is that the local authority's normal contract will usually have certain elements eg:

- restrictions on the level of increases of fees made by provider agencies (excluding any adjustment to the flat rate payments for personal and/or nursing care, which are determined in regulations);**
- agreements on when fees can be increased by provider agencies (excluding the timing of any adjustments to the payments for personal and/or nursing care, which will also be determined in regulations); and**
- an over-arching quality assurance and monitoring of all the care provided.**

Ensuring a nationally consistent contractual framework

5. A nationally consistent framework is essential. It will not always be straightforward to cross-relate 2 different contractual documents but in the interests of equity across Scotland, it must be undertaken.

There are certain critical features that must be nationally consistent, and are therefore set out in Annex C. Examples of issues which will be covered in the nationally consistent contract will be:

- 1. When payments for personal and/or nursing care can start.**
- 2. When payments should stop eg after admission to hospital, after death.**
- 3. The fact that part of payments for personal and/or nursing care cannot be withheld by local authorities, as they are standard national payments.**
- 4. Complaints procedures and the involvement of the Scottish Commission for the Regulation of Care (Care Commission).**
- 5. The responsibilities of the individual, provider agencies and local authority in relation to the payment of the fees.**

6. Where the contractual requirements in relation to payments for personal and/or nursing care (eg all payments for personal and nursing care will be paid for 3 days after the death of the individual) are different from existing local authorities contractual practice, they will take precedence in order to ensure national consistency.

Information for individuals

7. It is important that individuals, their carers, voluntary organisations and advocacy bodies are given relevant information about the different contractual arrangements which they can fully understand and then act upon.

8. Local authorities' staff and others do on occasions have concerns about the lack of independent information for individuals and their carers about living in care homes, particularly around fees.

9. Local authorities' staff, older people's organisations, the voluntary sector and the independent care providers all have a critical role to play in assisting and advising individuals and their carers about contractual arrangements and fees. This is especially so when individuals and carers approach local authorities' staff about their eligibility for personal and/or nursing care payments.

10. At this stage, and during the assessment process, local authorities' staff (or staff from other statutory agencies undertaking single shared assessments) should ensure that individuals and their carers fully understand the differences between the 3 contractual routes set out above.

11. The Scottish Executive will undertake a joint communication strategy with local authorities, voluntary organisations and advocacy bodies to enable staff to advise individuals, their families and carers as effectively as possible.

Effects of payments on existing fees

12. It should be clear to individuals that flat rate payments for personal and nursing care will be made by the local authority to the care home. Care home managers will wish to ensure that there is clarity in revised billing arrangements. These arrangements should also reflect the National Care Standards for Care Homes for Older People in relation to clarity of information regarding fees and fee structures.

13. It is important that the full financial benefit of the personal and nursing care policy is passed on to the individual who should see a consequent reduction in their care home fees. If it becomes evident that this is not happening, it should be reported to the Scottish Executive.

Summary

14. This Guidance cannot cover all the potential issues that may arise around contractual arrangements.

The 3 Routes to contractual arrangements do, however, offer a framework which:

- ensures individuals' freedom to choose;**
- ensures individuals' right to privacy particularly over their financial situation while they obtain the national payments for which they are eligible;**
- recognises the complexity and variability of the current contractual arrangements between local authorities and provider agencies;**
- builds on these existing contractual arrangements; and**
- ensures a nationally consistent framework for payments for personal and/or nursing care.**

15. In practice, there will be a number of contractual matters that will require clarity locally as the Care Commission takes up its responsibilities for inspection, registration, standards and quality from 1 April 2002. As a general rule, these issues should be resolved locally. However, the Executive would wish to be informed where local dispute is impeding implementation of the policy on free personal and nursing care.

5. PAYMENT MECHANISMS

1. All local authorities already have in place payment mechanisms for residential and nursing homes, day care and other services. Some of these will be on an individual spot-purchase basis, some on block contract and some on a mixture of systems. Some authorities also have direct payment systems in place for care at home. Arrangements for payments for personal and nursing care from 1 July 2002 should build on these existing mechanisms where possible.

Each payment mechanism will involve a range of systems including:

- a contract or agreement with the individual 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 individual or agency.

For those in care homes, the payments for personal and nursing care will be made to the care home - not the individual.

The following sections seek to identify a number of arrangements that may be required.

a) **Private or voluntary sector agencies providing home-based care services**

Private or voluntary sector agencies providing personal care services to an individual

Where the agency is currently providing personal care which is being paid for by an individual then the local authority will arrange a care needs assessment. A decision will be made about the appropriate number of personal care hours that the individual needs. Following completion of the appropriate local authority paperwork or IT steps, the local authority and agency can enter into their usual contract/agreement about payment mechanisms, eg:

- existing invoice systems;
- date in the month to be paid;
- hours or work, and days of the week for the service;
- tasks to be undertaken;
- bank account for payment to be made etc;
- all other details; and
- regular bank statements for the account.

b) **Private or voluntary sector agencies providing personal care and/or nursing care services in residential care homes or nursing homes**

Local authorities are not required to arrange care assessments for individuals meeting their own care costs on or before 31 March 2002 as they will be blanketed into the personal and nursing care payment system if they wish to take up the payments.

Contractual arrangements as set out in section 4 of this guidance will have to be agreed between the local authority and the care home for these individuals. The amounts payable for personal and

nursing care are set at a flat rate nationally and should not result in protracted negotiations over these elements of an individual's existing care package.

Those entering care homes on or after 1 April 2002 will have to undergo a full needs assessment arranged by the local authority if they wish public sector support for their care costs and contractual arrangements set out in Section 4 will apply.

c) Local authorities providing personal care services through their in-house home care service or residential care homes

Where home-based care is **currently** being provided, local authorities will need to agree with the individual, the careworker and if appropriate their carer, what is the level of personal care and the level of non-personal care within the services being provided by the local authority.

There will be no payment to the individual since the service is in-house but there may be a reduction in the level of charges as set out in section 3 of this guidance. The resources available to implement the policy contain an element to compensate local authorities for the loss of income because they can no longer charge for personal care.

For people starting to receive home-based personal care a full community care assessment must be completed, the volume of personal care to be provided in response to the assessed need recorded, and an appropriate level of charging for non-personal care ascertained by the local authorities' staff.

d) Individuals who either currently, or will in the future, purchase personal care services on an independent basis

It is important to be clear that an assessment of need for personal care must be undertaken by a local authority. This must identify the need for personal care. Only then can payments be made.

Local authorities have powers to make payments to people with disabilities to enable them to purchase their own personal care through a direct payments arrangement. However, at present only about 50% of local authorities offer direct payments. A provision in the Community Care and Health (Scotland) Act 2002 will make it a duty for all local authorities to offer eligible people direct payments from June 2003 as an alternative to organising services for them. A further provision will extend eligibility to include all community care groups. It is anticipated that this provision will come into effect from Spring 2004.

The Implementation Steering Group (ISG), in conjunction with the Care Commission, decided that a local authority should inform individuals currently purchasing personal care independently that they should:

- request direct payments (where this is available and appropriate); or
- request the careworker currently providing personal care should work through a provider agency approved by the local authority.

Payments would then be made through the existing mechanisms.

The disadvantage of this way forward is that it may upset existing arrangements where an individual has a well established relationship with a careworker who is not or does not wish to work through an approved agency.

However, the Scottish Executive and local authorities must ensure that individuals receive quality services at home, and there is no current national system for accrediting or quality assuring careworkers who do not work for an approved agency.

e) Payments to agencies not approved by local authorities or registered with health boards

Agencies providing care at home services should either currently be:

1. nursing agencies registered by Health Boards; or
2. home care agencies which have been placed on local authorities' Approved Providers List.

After 1 April 2002, the Care Commission will regulate care homes for adults, home care and independent health care.

Until the Care Commission is able to undertake its full range of functions, local authorities will need to decide how they wish to work with agencies that are not registered nursing agencies or approved providers, but are providing personal care services at home, eg:

- if it is possible before 1 July 2002, approve the agency, possibly on a conditional basis, with an agreed action plan for full approval
- ask the individual to accept a service from an approved agency. This may cause difficulties for the individual but will provide safeguards.

Local authorities and agencies can discuss issues with the Care Commission.

f) Nursing care payments in care homes

In future, there will only be one category of home - the care home. The distinction between a nursing home and a residential care home will be replaced by a new category of a care home which will be regulated by the Care Commission.

The decision about the nursing care payments cannot then be made on the basis of the type of home. It will be made on the basis of a national tool called the Resource Use Measure (RUM). The national RUM is being developed by the Scottish Executive to be applied in conjunction with individual needs assessments. The aim is to have one, national RUM to be applied incrementally across Scotland from July 2002 with full implementation from April 2003. The RUM is being designed to place individuals into bands of need on the basis of information from the needs assessment (ie single, shared assessment) and it will inform the determination of the individual's entitlement to payment for personal/nursing care.

In the interim, local authorities will need to ensure that for those self-funders who are assessed as needing nursing care in a care home outwith that provided by the NHS community nursing services, the flat rate nursing care payment of £65 per week is made to the care home.

g) Residency Rules

In order for local authorities to make payments on behalf of individuals, they will need to satisfy themselves that the individuals qualify on the basis of "ordinary residence" in their area. Current

legislation does not provide for residency qualifications to be imposed beyond those implied by 'ordinary residence' as set out in Circular No SWSG 1/96. The Executive will be reviewing this guidance in the coming months in consultation with CoSLA.

h) Cross-border placements

Scottish local authorities will occasionally make arrangements for clients who are ordinarily resident in their area to be placed in care homes in England, Wales or Northern Ireland. In such circumstances the individual 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 (SWSG 1/96).

i) Hospital admission

When an individual 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 an individual 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.

j) Individuals who have privately contracted to pay for more service than they have been assessed as needing

Staff in local authorities, particularly those involved in care needs assessment and finance staff, 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 individual needs.

If the individual 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 individual can pay for that service from their own resources, in a separate financial arrangement with the independent sector provider. This applies both to care at home arrangements and to nursing and residential care homes.

Individuals living in their own homes in the community are not eligible for nursing care payments.

k) Start date of payments and retrospective payments

From 1 July 2002, payments will commence once the nursing and/or personal care service is being provided. It does not start before and will not be backdated, eg to the date of referral or assessment.

For home-based personal care services currently being purchased by self-funders before 1 July 2002, payment will commence once the assessment is completed after 1 July 2002, the agreement

on the appropriate level of care is reached, and the service has been or is being provided by or on behalf of the local authority.

l) Use of payments by self-funders

The Care Development Group's Report states that, "in relation to personal care, we recommend that the payment should be equivalent to the amount which would have been spent by the local authority on meeting the assessed personal care needs of that person had they remained in their own home, up to a maximum of £90 per week".

This recommendation has been superseded by the Scottish Executive's decision to make nursing or personal care payments (which will be standard payments) only if an individual is assessed as needing care in a residential care home, nursing home or single care home and is living in such a home.

m) Free home care for up to 4 weeks after discharge from hospital

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

n) Opting in/out of the payment system for personal care and/or nursing care

It is the individual's responsibility to approach the local authority if they want to seek public sector support for their care costs. If they are resident in a care home and in receipt of Attendance Allowance or Disability Living Allowance (care component), they must notify the Department for Work and Pensions accordingly so these can be stopped in accordance with the rules.

It is the responsibility of the local authority to make payments to provider agencies and individuals with direct payment arrangements. It may choose to identify individuals in ways that are locally appropriate.

All providers can notify the local authority on behalf of existing self-funders provided the self-funder agrees.

With new applications for payments, it is the responsibility of the individual or someone acting on their behalf and with their consent to ask for an assessment. This can be a carer, advocate or provider.

o) Payments for short-term nursing care and personal care

There may be occasions where individuals need to have nursing or personal 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 are unable to look after the individual; and
- for a trial period - to explore whether they would prefer to move into a care home on a permanent basis.

For these short-term requirements, local authorities should satisfy themselves that the individual's care needs are 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 home which should indicate the level of need. A guiding principle here should be that individuals should not be treated any less generously under these arrangements than they would otherwise have been.

6. MONITORING AND ACCOUNTABILITY

1. The Care Development Group emphasised the need to monitor the implementation and impact of the new policy on personal and nursing care. Arrangements will need to be put in place in advance of 1 July 2002 to ensure monitoring can start when the policy comes into effect. It will not cover issues such as contract compliance as this should continue to be undertaken according to agreed practice locally. Similarly it will not cover monitoring of quality of care as this too should comply with local authorities' care management processes and be covered by the Care Commission.

2. The purpose of the arrangements will be to provide an overview for all interested parties of the deployment and outcome of the resources available for the new policy and to measure shifts in the balance and volume of care and in the ways care is provided.

3. As a first step, there is a need to monitor expenditure against the funding that has been made available to local authorities for the policy over the next 2 financial years. Local authorities will receive their allocations of the £250m allocated for 2002-04. The provision falls into 2 broad categories:

- compensation for the personal and nursing care charges of self-funding residents; and
- provision towards the development of community based services.

4. Local authorities will be required to identify expenditure against provision in these 2 categories separately and provide quarterly returns to the Scottish Executive.

Community Care and Health (Scotland) Act 2002

[ANNOTATED EXTRACT]

1 Regulations as respects charging and not charging for social care

(A) 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—

- (b) personal care as defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8) [*“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)*];
- (c) personal support as so defined [*“personal support” means counselling, or other help, provided as part of a planned programme of care*];
- (d) 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
- (e) 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 this Act, of sections 22 (charges to be made for accommodation), 26 (provision of accommodation in premises maintained by voluntary organisations) and 65 (general provisions as to application to Scotland) of the 1948 Act and of 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 or under section 7 of the 1984 Act (arrangements in relation to persons who are or have been suffering from mental disorder).

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

(B) “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,

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

SCHEDULE 1

3 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 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 the person's eating requirements—
- (a) assisting with the preparation of food;
 - (b) assisting in the fulfilment of special dietary needs.
- [Eating and washing is explicitly included within the definition of personal care (see 1(1)(a))]*
- 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))]

Notification of Award of Personal Care Payment Towards Care Home CostsNational Insurance No. Surname Other Names Address

Postcode Date of birth Date funding started Local Authority name Local Authority address or stamp

Postcode Date of admission to home **Declaration****I declare**

that the individual concerned has given permission for this information to be passed on to the Department for Work and Pensions.

Signature**Date**

Nationally Consistent Framework for a Route 2 Contract Between Local Authorities and Independent Sector Care Homes

INTRODUCTION

1. This model contract has been developed by the Executive to guide and support both local authorities and care providers as they develop and agree their own Route 2 contracts as part of the implementation of the Executive's policy on free personal and nursing care.
2. As described in Section 4, a service user who chooses to go down Route 2, the mutual route, will use 2 contracts, one private contract between himself and the care home for hotel and living costs, and a second nationally consistent contract for personal and/or nursing care. This second contract will be between the local authority on behalf of the service user and the care provider and will relate solely to the provision of and payments towards personal and/or nursing care.
3. Where appropriate, in the interests of national consistency and equity, core contract conditions should be incorporated into tripartite contracts agreed under Route 3, the integrated route.

Background

4. The Route 2 contract is a contract between a local authority and a care provider for the provision of personal and/or nursing care to a care home resident in return for the flat rate payments set down in regulations of the Scottish Parliament (currently £145 per week for personal care and £65 for nursing care.) It can only be used for those residents who have entered or will enter into a private agreement with the care provider for the other parts of their care package (i.e. their accommodation/"hotel" costs) but who have asked the local authority to contribute towards their care costs in accordance with the Executive's policy on free personal and nursing care.
5. For further information on Route 2 contracts and on the different contractual options available to existing care home residents and those entering residential care, see Section 4: Contracts.

The Role of the Model Contract

6. This guidance is aimed at ensuring that local authorities and care providers can agree Route 2 contracts which are nationally consistent in time for the 1 July implementation date for the Executive's policy on free personal and nursing care. The model contract has been developed in conjunction with local authorities and the private care sector and should serve as the basis for all Route 2 contracts.
7. In particular, the model contract, together with this circular, seeks to clarify which aspects of a Route 2 contract need to be consistent across Scotland, regardless of which local authority and which service provider are signatories to the contract. For example, the conditions under which the contract can be terminated and the length of time for which payments will continue after the death of the Resident are set out in the model contract and should be replicated in all Route 2 contracts. Similarly the pre-conditions which must be met before a Route 2 contract can be entered into, the length of time for which payments will continue if the resident is temporarily absent from the home and the amount of the contract price should be the same in all Route 2 contracts.

8. Other elements of the model contract are intended as a suggestion or starting point, but may need to be varied to reflect existing local practices, local authority standing orders etc. For example, this is true of parts of those clauses which relate to the monitoring and review of the resident's care needs.
9. It is also possible that local authorities and/or care providers may wish to expand certain parts of the model contract to avoid any room for misunderstanding or ambiguity. For example, the model contract refers to the local authority's "usual payment mechanisms" to reflect the existing variations from authority to authority. However, both local authorities and care providers are likely to see it as desirable that the particular payment mechanisms to be used are described in detail within any Route 2 contract which they are entering into.

Short-Term Placements

10. The model contract has been drafted primarily with long term placements in mind. However, many of the same terms and conditions should apply in the case of a short-term placement which is being established on a Route 2 basis. Indeed, the only obvious change to the Schedule which might be necessary in the case of a short-term placement is to the notice periods in the Termination of Contract clause.

SPECIFIC POINTS ABOUT THE MODEL CONTRACT

The Offer

11. The wording of the offer and information contained may vary slightly from authority to authority. However, for the sake of transparency, it is important that the offer is in respect of a particular resident, that the resident's name is on the front sheet of the offer and that the offer states the level of care which will be provided to the resident under the contract (personal care or nursing care or personal and nursing care.)

THE SCHEDULE

Definition of the Contract Price:

12. The contract price is set in regulations of the Scottish Parliament (The Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002) and can only be varied through regulations. The definition is worded in such a way that if the contract price is changed in regulations at some future date, then no amendment will be needed to existing contracts.

Pre-Conditions concerning the resident:

13. The third pre-condition concerning the resident ((c) in 2.2) is that the resident must either have been assessed by the local authority as requiring personal and/or nursing care or "is a person referred to in Regulation 2 of the Community Care (Assessment of Needs) (Scotland) Regulations 2002...." This refers to those people who were already in a care home prior to 1 April 2002 and for whom local authorities can arrange the provision of personal and/or nursing care without carrying out a needs assessment under the transitional arrangements for implementation.

Duration of Contract:

14. Section 2 sets out the eligibility criteria. Paragraph 18 notes that 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. Following a needs assessment, payment towards personal care should commence when the authority is in a position to arrange or provide the required services. At this point, we believe the existence of the model contract should ensure that the individual's contract can be put in place readily.

Payment

15. The local authority must pay the entire contract price to the care provider in return for the services and cannot withhold a part of the payment for any reason or all of the payment except for the reasons contained in Clauses 10, 14, 15 and 18 (loss of registration, temporary absence of the resident from the home for longer than 14 days, death of the resident or termination of the contract.) This is a statutory requirement.
16. It should be clear to individuals that flat rate payments for personal and nursing care will be made by the local authority to the care home. Care home managers will wish to ensure that there is clarity in revised billing arrangements. These arrangements should also reflect the National Care Standards for Care Homes for Older People in relation to clarity of information regarding fees and fee structures.
17. It has been suggested that the contract should state that the entire contract price must be passed on by the care provider to the resident. We do not think that such a clause can be included for legal reasons. However, it is important that the full financial benefit of the personal and nursing care policy is passed on to the individual who should see a consequent reduction in their care home fees. If it becomes evident that this is not happening, it should be reported to the Scottish Executive.
18. It is likely that both local authorities and care providers will want to expand on the phrase "usual payment mechanisms" by clarifying exactly what payment mechanisms will apply. We anticipate that in most cases these will be the same payment mechanisms which apply to existing contracts between particular local authorities and particular care providers. We have not attempted to include such payment mechanisms in the model contract because of the considerable variations from authority to authority. We do not see this variation in payment mechanisms as a problem and are happy for local authorities and care providers to agree payment mechanisms as they see fit.
19. Local authorities may also wish to go into greater detail in their own Route 2 contracts about the arrangements and timing for the provision of receipted invoices to the local authority by the care provider.

Monitoring and Review of Resident's Care Needs: Initial Review

20. Where there is no trial period, an initial review should still be carried out during the first few weeks after the contract has been entered into, in addition to the review after six months.

Monitoring and Review of Resident's Care Needs: Responsibility for Annual Review

21. Arrangements as to who is responsible for the annual review vary from local authority to local authority. The Executive accepts such variations, provided that there is clarity in the contract about who is responsible for the annual review and when it will be carried out.

Complaints

22. In some existing contracts between local authorities and care providers, it is the care provider's responsibility rather than the local authority's to advise the resident of their right to complain to the local authority about any aspect of the care being provided under the contract. The Executive has no objection to this responsibility falling on the provider rather than the council, as long as there is clarity for the resident.

Insurance

23. Insurance is a mandatory requirement of care home registration under the Regulation of Care (Scotland) Act 2001. For this reason, some local authorities may feel that this clause is unnecessary. This is a decision for individual authorities on the basis of the advice they receive.

Statutory Obligations

24. Local authorities may wish to replace this clause with their own standard equivalent clause.

Temporary Absence from the Home: Cessation of Payments

25. The cessation of payments of the contract price after the resident has been temporarily absent from the home for a period of 14 days is an important element of national consistency across all Route 2 contracts. This condition should not be varied in any Route 2 contract.
26. We have heard arguments in favour of a sliding scale of decreasing payments after 14 days (as is sometimes the case in existing contracts between local authorities and care providers) and arguments in favour of a longer period of continued payments in the case of hospitalisation. However, the Executive considers that it cannot justify the provision of personal and nursing care payments beyond 14 days to anyone who is not receiving those services as a result of temporary absence from the home (and who in the case of hospitalisation is also receiving that care elsewhere from public funds).

Death of the Resident

27. The continued payment of the contract price for 3 days after the date of death is an important element of national consistency. This condition should not be varied in any Route 2 contract.
28. For the avoidance of doubt, this clause means that the local authority's financial obligation will end 3 complete days after the resident's death (i.e. if the resident died on 1 September, the contract price should be paid *pro rata* up to and including 4 September.)

Assignment and Sub Contracting

29. Provided that the purchaser/intended purchaser is already registered or succeeds in being granted registration, we do not see any reason why the local authority would not consent to an assignment of the contract in favour of the purchaser.

User Agreements

30. The Route 2 contract will run alongside the private agreement between the resident and the care provider. However, one of the signatories to the Route 2 contract, the local authority, may not see the private agreement. This clause is in part intended to protect the local authority in this situation and to ensure that where the private agreement and the Route 2 contract are in conflict, the Route 2 contract takes precedence.

Termination of the Contract: The care being provided is no longer appropriate

31. At the time that a Route 2 contract is entered into, the contract will specify whether personal care or nursing care or personal care and nursing care is to be provided to the resident under the contract. The contract price to be paid by the local authority to the care provider will vary according to the type of care being provided.
32. As a result of a re-assessment (or assessment in the case of a resident who received the care under the transitional arrangements for implementation) of the resident's care needs at a later date, it may become apparent that the care which the resident is receiving under the contract is no longer appropriate. This could be because the resident's care needs have significantly increased and the resident now requires nursing care as well as personal care. Alternatively, a resident's care needs might decrease (during recovery from a stroke for example) to the point where a resident who was being provided with personal care under the contract is assessed as no longer requiring either personal or nursing care.
33. In all of these instances, since the contract was established for the provision of a particular type of care (personal care or nursing care or personal and nursing care), the Executive's view is that it would not be appropriate to continue with or adapt the existing contract. Instead, the existing Route 2 contract would need to be terminated under Clause 18. If the resident has been assessed as no longer having care needs, and is therefore ineligible for a continued contribution towards their care costs, it will not be appropriate to agree a new Route 2 contract. However, if the resident's care needs have changed rather than ceased, then it will be appropriate to agree a new Route 2 contract which reflects these changed needs. This new Route 2 contract would begin the day after the old contract was terminated.

Notices: The person nominated by the council

34. It has been suggested that local authorities may wish to nominate a member of staff more senior than the care manager in this clause.

Variations, 23. Law of Scotland and 24. Exercise of Powers: Standard Clauses

35. Local authorities may choose to substitute their own standard clauses to replace those here. In addition, local authorities may have other standard clauses which it might be appropriate to include within this part of the schedule.

COUNCIL

**Contract for the provision of personal
and nursing care for Route 2**

Name of Service Provider

In respect of:-

(Name of Resident)

For a short term placement / long term placement (delete as applicable)

..... Council

..... Address

.....

.....

I/We HEREBY OFFER to provide the Services to the Resident on the terms and conditions as set out in the Schedule for the Contract Price payable by you for Personal Care / nursing care / Personal Care and nursing care (delete as applicable).

To the best of my/our knowledge and belief I/we have complied with all statutory requirements in respect of ensuring equal opportunity in employment.

I confirm that a copy of the Contract will be given to the Resident at the commencement of the Care.

Signed Date

Name of signatory (in block capitals)	
Position of signatory	
Name(s) under which the Home is registered with the Commission (hereinafter referred to as "the Provider")	
Address under which the Home is registered with the Commission (if different from below)	
Name of Resident	
Address of Home	
Company Registration No. (if applicable)	

This is the Schedule referred to in the foregoing Offer between the Provider and the Council

Terms and Conditions of Contract for Personal Care and nursing care

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TERMS AND CONDITIONS OF CONTRACT

INTRODUCTION

The Contract is entered into by the Council and the Provider for the purpose of securing appropriate and adequate Care for the Resident who has or will have arranged his or her own residential accommodation with the Provider by Private Agreement.

1. DEFINITIONS, INTERPRETATIONS AND RELATED MATTERS

1.1 In the Contract:-

“Care” means Personal Care and/or nursing care.

“Care Assessments” means the assessments undertaken by the Council’s Social Work staff.

“Care Standards” means the standard of care set out in “National Care Standards” published by the Scottish Executive and available from the Stationery Office Bookshop, 71 Lothian Road, Edinburgh EH3 9AZ.

“Care Manager” means the person appointed by the Council to monitor the Care provided to the Resident by the Provider.

“Contract” means the foregoing Offer incorporating the Schedule and the Council’s written acceptance thereof.

“Contract Price” means:

(a) where Personal Care only is provided, the amount from time to time set out at regulation 2(a) of the Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002*,

(b) where nursing care only is provided the amount from time to time set out at regulation 2(b) of those Regulations*, and

(c) where both kinds of care are provided, the aggregate of the two amounts*.

*As at 1 July 2002

nursing care only	-	£65 per week
Personal Care only	-	£145 per week
nursing care and Personal Care	-	£210 per week

“Council” means Council, a local authority constituted in terms of the Local Government etc (Scotland) Act 1994 and having its Head Office at and any successor council.

“Commission” means the Scottish Commission for the Regulation of Care, Compass House, 11 Riverside Drive, Dundee.

“Complaints Procedure” has the meaning set out in Section 25 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.

“Home” means the whole buildings and associated lands used as a care home by the Provider and may include any alternative accommodation approved by the appropriate authority in the event of emergency for the purposes of temporarily accommodating all or any part of the management, staff and residents thereof.

“Parties” means the Council and the Provider and "Party" shall be construed accordingly.

“Personal Care” means care of a kind referred to in Section 1(1)(a), (b) and (c) of the Community Care and Health (Scotland) Act 2002.

“Personal Plan” has the meaning set out in regulation 5 of the Regulation of Care (Requirements as to Care Services) Regulations 2002.

“Private Agreement” means any agreement entered into between the Provider and the Resident which sets out the residential terms and conditions of the Resident’s residence in the Home.

“Provider” has the meaning ascribed to it in the foregoing Offer.

“Registration” means registration of the Home with the Commission.

“Representative” means any person nominated by the Resident to be first contacted or advised by the Provider and the Council regarding the Resident’s circumstances, or any significant change thereto, who shall, in the event of the Resident failing to nominate any such person, be the Resident’s next of kin or attorney (if any).

“Resident” means the person to whom the Services are provided in terms of the Contract.

“Schedule” means this Schedule to the Contract.

“Services” means the Care provided in accordance with the terms and conditions of the Contract.

1.2 References to any statutory provisions in the Contract shall be construed as references to those provisions as respectively amended or re-enacted either before or after the date of the Contract.

1.3 In the Contract, words importing the singular number only shall be deemed to include the plural number and vice versa unless the context otherwise requires and words importing the masculine gender shall be deemed to include the feminine gender and vice versa unless the context otherwise requires.

1.4 Reference to persons in the Contract shall include all entities with legal personality including natural persons, partnerships and companies save where the context otherwise requires.

2. PRE CONDITIONS

2.1 The Provider shall be registered with the Commission, or an equivalent body if the placement is outwith Scotland.

- 2.2 The Resident (a) has chosen the Home to provide the Care and (b) has entered or will have entered into a Private Agreement with the Provider and (c) has either had a Care Assessment carried out and been assessed by the Council as requiring Care, or is a person referred to in Regulation 2 of the Community Care (Assessment of Needs)(Scotland) Regulations 2002 to whom the Council has decided to provide or to secure the provision of Care without carrying out such a Care Assessment.

3. DURATION OF CONTRACT

- 3.1 The Contract will commence on the last date of execution hereof or the date of the Resident's entry to the Home, whichever is the later, and will continue until terminated in accordance with any of the terms of the Contract.

4. SERVICES TO BE PROVIDED

- 4.1 The Provider shall, in exchange for the Contract Price, provide Care to the Resident in accordance with the Care Standards.

5. PAYMENT

- 5.1 The Council will pay the Contract Price to the Provider for the Services in accordance with the Council's usual payment mechanisms. The Provider will provide receipted invoices to the Council.
- 5.2 If payment of the Contract Price is not made within 28 days of the due date, the Council shall on written demand by the Provider pay interest at 2% above the Royal Bank of Scotland Base Rate from time to time in respect of each day of overdue payment.

6 ASSESSMENT AND CARE MANAGEMENT

- 6.1 Care Assessments will be arranged by the Council.
- 6.2 The Resident will have a Care Manager allocated by the Council.

7. MONITORING AND REVIEW OF RESIDENT'S CARE NEEDS

- 7.1 The Resident's Care, including a report by the Provider on the review of the Resident's Care in the Personal Plan, will be reviewed at the end of any trial period, (initial review) and six months after the start of the Contract and annually thereafter.
- 7.2 The Resident, the Representative, the Council, and the Provider may request a review at any other time.

- 7.3 The Care Manager will be responsible for calling, arranging a venue for and minuting, the initial review and the six month review.
- 7.4 Annual reviews will thereafter be the responsibility of the Provider. The Provider will advise the Care Manager of any review and will give the Care Manager the opportunity to comment as part of the review.
- 7.5 The Care provided in the Home will be in accordance with the Care Standards as inspected and monitored by the Commission. The Council will utilise this information for the purposes of monitoring the provision of the Care by the Provider.

8. CONTRACT MONITORING

- 8.1 The Provider will comply with the Council's systems for monitoring, evaluating and auditing the operation of the Contract upon being given reasonable notice by the Council. The Council will advise the Provider about the systems for monitoring, evaluating and auditing in use. The Council reserves the right to visit the Home and the Resident at any reasonable time without giving notice and without prejudice to the Resident's right to privacy.

9. COMPLAINTS

- 9.1 The Provider will provide a copy of the complaints procedure of the Home to the Council and the Resident.
- 9.2 The Resident will be advised by the Council that he or she has the right to complain directly to the Council if he or she is not happy with any aspect of the Care.
- 9.3 The Provider will ensure that the Resident and the Representative know how to make a complaint and are assisted with the completion of the documents (if required).
- 9.4 The Provider will notify all complaints relating to the Contract to the Council routinely as part of the auditing of the Contract.

10. REGISTRATION

- 10.1 In the event of the Commission serving notice of intent to take, or notice of decision to implement enforcement action against the Provider, the Council may, but shall not be bound to terminate the Contract without notice irrespective of whether or not the time for any representation or appeal with respect to the enforcement action has expired or that a representation or an appeal is pending.

11. CONFIDENTIALITY

- 11.1 Other than as permitted in terms of Clause 11.2 below, the Provider and its staff shall regard as strictly confidential and shall not disclose to any unauthorised person, at any time during or after the duration, of the Contract, any

information obtained in relation to the Council or the Resident. The Provider shall not use any such information except as specifically required for the purposes of performing its obligations under the Contract.

- 11.2 Notwithstanding Clause 11.1 above, the Provider may, with the prior consent of the Resident, disclose personal and medical information relating to the Resident to the relatives of the Resident or other suitably interested person in respect of the Resident. Such information must have also been made available to the Resident, subject always to any legislation, rule of law, or any pending civil or criminal investigation or inquiry and in particular to compliance with the Access to Personal Files Act, 1987 and the Data Protection Act, 1998.
- 11.3 The Provider shall at all times, ensure that its employees observe the principle of confidentiality in terms of Clauses 11.1 and 11.2 above. The Provider shall indemnify the Council against any claims made by the Resident or any third party, as a result of either the Provider, or its employees, failing to maintain confidentiality in terms of this contract.
- 11.5 The Provider shall not, unless permitted or requested to do so by the Resident, reveal information relating to any other contract which might exist between the Provider and the Resident.
- 11.6 The Provider shall not, unless permitted or requested to do so by the Resident, reveal any financial information about the Resident, even if the Provider is aware that the Resident's capital or income appears to be running low.
- 11.7 The obligations of confidentiality contained in this clause shall survive the termination of the Contract.

12. INSURANCE

- 12.1 The Provider shall be responsible for ensuring that appropriate and adequate insurance is maintained throughout the duration of the Contract.

13. STATUTORY OBLIGATIONS

- 13.1 Throughout the duration of the Contract, the Provider will observe and comply with all statutory enactments and regulations, and bye-laws of local or other authorities or other public bodies applicable to the Home and to the Services including and without prejudice to the foregoing generality, the Adults with Incapacity (Scotland) Act 2000 and those applicable to Health and Safety at Work, Human Rights and Race Relations.

14. TEMPORARY ABSENCE FROM THE HOME

- 14.1 The Provider will provide the Care to the Resident over a twenty four hour period, 365 days a year, subject to any hospitalisation or other absence agreed between the Resident and the Provider.

- 14.2 The Provider will immediately inform the Representative and the Council if the Resident is absent from the Home without notice.
- 14.3 In the event of the hospitalisation of the Resident, the Provider will, as soon as reasonably practicable (but in any event no later than the next working day) inform the Council.
- 14.4 The Council will continue to pay the Contract Price for a period of fourteen days from the commencement of the Resident's absence from the Home.

15. DEATH OF THE RESIDENT

- 15.1 In the event of the death of the Resident, the Provider will, as soon as is reasonably practicable, but no later than the next working day, inform the Council.
- 15.2 The Contract and the Council's financial obligation will terminate three complete days after the date of death (the date of the Resident's death being day zero).

16. ASSIGNATION and SUB CONTRACTING

- 16.1 The Provider binds and obliges itself:
- (a) not to assign or sub-contract any part of the Contract without the prior written consent of the Council, and
 - (b) not to significantly change the facilities or amenities of the Home without giving the Council and the Resident at least 4 weeks' written notice, and
 - (c) to give at least 4 weeks' written notice to the Council and the Resident prior to a sale of the Home being completed.
- 16.2 In the event of the Provider selling or entering into an agreement to sell the Home, the Council may, upon being satisfied of the intended purchaser's suitability, and provided the intended purchaser applies for and is granted registration by the Commission within 60 days of the sale, consent to an assignation of the Contract in favour of the purchaser.

17. USER AGREEMENTS

- 17.1 The Resident will not be required or requested by the Provider to sign any agreement in respect of his or her place in the Home which conflicts with the provisions of the Contract. Where any such agreement, including the Private Agreement, does so conflict the terms of the Contract shall take precedence.

18. TERMINATION OF THE CONTRACT

- 18.1 Without prejudice to Clause 15.2, the Contract will subsist until termination in accordance with the provisions of this Clause 18.
- 18.2 The Provider may terminate the Contract, by giving 28 days written notice to the Resident and the Council.
- 18.3 If the Provider has a receiver appointed, becomes insolvent, apparently insolvent, or is sequestrated or goes into liquidation (other than voluntary liquidation for the purposes of reconstruction or amalgamation) or is wound up by the Court or is voluntarily wound up by creditors or by members, the Council shall be entitled to terminate the Contract with immediate effect.
- 18.4 The Council may terminate the Contract immediately without notice and advise the Resident if the Provider commits a material breach of the terms and conditions of the Contract. One of the circumstances constituting a material breach will be the serving on the Provider by the Commission of a decision notice stating that the Commission has decided to implement a proposal to cancel registration.
- 18.5 The Provider may terminate the Resident's Care upon giving the Council and the Resident 28 days' notice in writing if:
- (a) the care needs of the Resident are such that the Provider, the Council and the Commission agree that the Provider is unable to continue to provide appropriate care; or
 - (b) the Council has failed to pay the Contract Price to the Provider in accordance with the Contract.
- 18.6 The Council may terminate the Contract upon 28 days' written notice if the Care being provided under the Contract is no longer appropriate to the Resident's care needs.
- 18.7 Notwithstanding any of the above the Council may terminate the Contract upon 28 days' written notice. The Council will advise the Provider in writing of its reasons for terminating, except where this would conflict with any duty of confidentiality between the Council and any other person.
- 18.8 Notwithstanding any of the above, the Contract will terminate with effect from the date of termination of the Private Agreement. If the Provider receives notice of the Resident's intention to leave the Home or to terminate the Private Agreement, the Provider shall notify the Council.

18.9 During any notice period stipulated in this Clause 18, the Provider and the Council will co-operate to ensure that Care is provided to the Resident.

19. RESOLUTION OF DISPUTES

19.1 If any dispute arises between the Council and the Provider in respect of the Contract the Council and the Provider shall use their reasonable endeavours to reach an amicable and workable resolution of the matter in dispute within two weeks of the dispute arising.

19.2 If a dispute is not resolved between the Council and the Provider in terms of Clause 19.1, then the dispute will be referred to the dispute resolution procedure set out in the Commission's regulations and shall follow all the steps therein as appropriate. The Care will continue until the dispute is resolved.

20. NOTICES

20.1 Any notice in writing required to be given to either Party in terms of the Contract, whether delivered by hand or first class post (in which case receipt shall be deemed to have occurred forty eight hours after such posting) or other information, instructions or communication given to the Provider at the Home, shall be deemed to have been received by the Provider.

20.2 Any notice in writing whether delivered by hand or by first class post (in which case receipt shall be deemed to have occurred forty eight hours after such posting) or other information, instruction or communication given to the Care Manager or any other person nominated from time to time by the Council being the duly authorised representative for all purposes connected with the Contract, shall be deemed to have been received by the Council.

21. PREVENTION OF CORRUPTION AND COLLUSION

21.1 The Council will be entitled to terminate the Contract with immediate effect and to recover from the Provider the amount of any loss resulting from such cancellation if the Provider has given or agreed to give, to any member, employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing any act in relation to the obtaining or carrying out of the Contract or the Care of the Resident.

22. VARIATIONS

22.1 The terms of the Contract shall not be amended or varied in any way other than by a written Minute of Variation between duly authorised representatives of the Provider and the Council and shall be intimated forthwith to the Resident.

23. LAW OF SCOTLAND

23.1 The construction, validity, performance and all other matters arising out of and in connection with the Contract shall be governed by the Law of Scotland.

24. EXERCISE OF POWERS

24.1 The Council will exercise any of its powers, obligations or discretions in terms of the Contract, in a reasonable manner and in accordance with its statutory obligations.

25. ENTIRE AGREEMENT

25.1 The Contract shall constitute the entire contract between the Council and the Provider in respect of the Home and the Resident's admission to the Home and supersedes all prior oral or written agreements, understandings or undertakings between the Council and the Provider in respect of the Home and the Resident.