



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART VII

MISCELLANEOUS AND GENERAL

General

84 Transfer of assets and liabilities.

Where any functions are transferred to a local authority by virtue of this Act all property, rights, liabilities and obligations relating to the performance of those functions which immediately before the date of transfer were the property, rights, liabilities and obligations of the body or person from which the functions are transferred shall on that date be transferred to and vest in the local authority or, as the case may be, the local authorities to which the functions have been transferred, and the provisions of Schedule 6 to this Act shall have effect for the purposes of this section.

85^{F1}

Textual Amendments

F1 S. 85 repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 4 Pt. I](#)

86 Adjustments between authority providing accommodation etc., and authority of area of residence.

(1) Any expenditure which apart from this section would fall to be borne by a local authority—

- (a) in the provision under this Act [^{F2}, or under section 25 of the Children (Scotland) Act 1995,] of accommodation for a person ordinarily resident in the area of another local authority, or

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- (b) in the provision under Part II of this Act ^[F3], or under or by virtue of Part II of the said Act of 1995, of services and facilities for a person ordinarily so resident (including, in the case of a child, any expenses incurred after he has ceased to be a child, and, in the event of another local authority taking over, under section 25(4) of that Act, the provision of accommodation for him,] including also any travelling or other expenses incurred in connection with the taking over), or
- (c) for the conveyance of a person ordinarily resident as aforesaid, or
- (d) in administering a supervision requirement in respect of a person ordinarily resident as aforesaid, ^[F4]or
- ^[F4](e) in the provision of accommodation, services or facilities for persons ordinarily so resident under section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984;]
- shall be recoverable from the other local authority, and in this subsection any reference to another local authority includes a reference to a local authority in England or Wales.
- (2) Any question arising under this section as to the ordinary residence of a person shall be determined by the Secretary of State, and the Secretary of State may determine that a person has no ordinary residence.
- (3) In determining for the purposes of subsection (1) of this section the ordinary residence of any person or child, any period during which he was a patient in a hospital ^[F5]forming part of the hospital and specialist services] provided under ^[F6]sections 2 and 3 of the ^{M1}National Health Service Act 1977] or ^[F7]Part II of the ^{M2}National Health Service (Scotland) Act 1978]^[F8]or in a hospital managed by a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978] or, in the case of a child, any period during which he resided in any place as an inmate of a school or other institution, or in accordance with the requirements of a supervision requirement, supervision order or probation order or the conditions of a recognizance, or while boarded out under this Act or under ^{F9} . . . the ^{M3}Children and Young Persons (Scotland) Act 1937 by a local authority or education authority ^[F10]or placed with local authority foster parents under the Children Act 1989]^[F11]or provided with accommodation under paragraph (a) of, or by virtue of paragraph (c) of, section 26(1) of the Children (Scotland) Act 1995] shall be disregarded.

Textual Amendments

- F2** Words in s. 86(1)(a) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F3** Words in s. 86(1)(b) substituted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F4** S. 86(1)(e) and the word “or” immediately preceding it inserted (1.4.1991) by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, s. 66(1), **Sch. 9 para. 10(11)**
- F5** Words repealed (S.) by **National Health Service (Scotland) Act 1972 (c. 58, SIF 113:3)**, **Sch. 7 Pt. II**
- F6** Words substituted by **National Health Service Act 1977 (c. 49, SIF 113:2)**, **Sch. 15 para. 48**
- F7** Words substituted by **National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2)**, **Sch. 16 para. 29(2)**

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- F8** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(12\)](#)
- F9** Words in s. 86(3) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch. 15](#); S.I. 1991/828, [art. 3\(2\)](#)
- F10** Words in s. 86(3) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 23](#); S.I. 1991/828, [art. 3\(2\)](#)
- F11** Words in s. 86(3) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36](#), s. 105(4), [Sch. 4 para. 15\(24\)\(b\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, [art. 2](#) (with transitional provisions inserted into S.I. 1996/3201 by [art. 3](#)))

Marginal Citations

- M1** 1977 c. 49.
M2 1978 c. 29.
M3 1937 c. 37.

[^{F12}86A Exclusion of powers to provide accommodation in certain cases.

- (1) Subject to subsection (3) below, no accommodation may be provided under this Act for any person who, immediately before the date on which this section comes into force, was ordinarily resident in relevant premises.
- (2) In subsection (1) above “relevant premises” means—
 - (a) any establishment in respect of which a person is registered under section 62 of this Act;
 - (b) any nursing home within the meaning of the Nursing Homes Registration (Scotland) Act ^{M4}1938 in respect of which a person is registered or exempt from registration under that Act;
 - (c) any private hospital registered under section 12 of the Mental Health (Scotland) Act ^{M5}1984; and
 - (d) such other premises as the Secretary of State may by regulations prescribe.
- (3) The Secretary of State may by regulations provide that in such cases and subject to such conditions as may be prescribed subsection (1) above shall not apply in relation to such classes of persons as may be prescribed in the regulations.
- (4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) above.
- (5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract.]

Textual Amendments

- F12** [S. 86A](#) inserted (S.) (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 57; S.I. 1992/2975, [art. 2\(2\)](#), [Sch.](#)

Modifications etc. (not altering text)

- C1** [S. 86A\(1\)](#) restricted (1.4.1993) by S.I. 1993/477, [regs. 4-9](#).

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Marginal Citations

M4 1938 c. 73(113:3).

M5 1984 c. 36(85).

87 Charges that may be made for services and accommodation.

[^{F13}(1) Subject to sections 78 and 78A of this Act (contributions in respect of maintainable children) and to the following provisions of this section, a local authority providing a service under this Act [^{F14}or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984][^{F15}or under or by virtue of Part II of the Children (Scotland) Act 1995] may recover such charge (if any) for it as they consider reasonable.

(1A) If a person—

- (a) avails himself of a service provided under this Act [^{F16}or section 7 or 8 of the said Act of 1984][^{F15}or under or by virtue of Part II of the Children (Scotland) Act 1995]; and
- (b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

the authority shall not require him to pay more for it than it appears to them that it is practicable for him to pay.]

- (2) Persons, other than maintainable children, for whom accommodation is provided under this Act [^{F17}or section 7 of the said Act of 1984], shall be required to pay for that accommodation in accordance with the subsequent provisions of this section.
- (3) Subject to the following provisions of this section, accommodation provided under this Act [^{F17}or section 7 of the said Act of 1984] shall be regarded as accommodation provided under Part III of the ^{M6}National Assistance Act 1948, and [^{F18}sections 22(2) to (8)] and 26(2) to (4) [^{F19}as amended by [^{F20}the Schedule to the Housing (Homeless Persons) Act 1977, paragraph 2(1) of Schedule 4 to the Social Security Act 1980,] section 20 of the ^{M7}Health and Social Services and Social Security Adjudications Act 1983 [^{F21}and paragraph 32 of Schedule 10 to the Social Security Act 1986]] (charges for accommodation and provision of accommodation in premises maintained by voluntary organisations) and sections 42 [^{F22}(as amended by paragraphs of Schedule 1 to the Law Reform (Parent and Child) (Scotland) Act 1986) and 43] of the said Act of 1948 (which make provision for the mutual maintenance of wives and husbands and the maintenance of their children by recovery of assistance from persons liable for maintenance and for affiliation orders, etc.) shall apply accordingly.
- (4) In the application of the said section 22, for any reference to the Minister there shall be substituted a reference to the Secretary of State, and in the application of the said section 26, any references to arrangements under a scheme for the provision of accommodation shall be construed as references to arrangements made by a local authority with a voluntary organisation [^{F23}or any other person or body] for the provision of accommodation under this Act [^{F24}or section 7 of the said Act of 1984].
- (5) The Secretary of State may, with the consent of the Treasury, make regulations for modifying or adjusting the rates at which payments under this section are made, where such a course appears to him to be justified, and any such regulations may provide for the waiving of any such payment in whole or in part in such circumstances as may be specified in the regulations.

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(6) F25

Textual Amendments

- F13 S. 87(1)(1A) substituted for s. 87(1) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 18](#)
- F14 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 66\(1\)](#), [Sch. 9 para. 10\(13\)\(a\)](#)
- F15 Words in s. 87(1)(1A) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(25\)](#) (with [s. 103\(1\)](#)); [S.I. 1996/3201, art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744, art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201](#) by [art. 3](#)))
- F16 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 66\(1\)](#), [Sch. 9 para. 10\(13\)\(b\)](#)
- F17 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 66\(1\)](#), [Sch. 9 para. 10\(13\)\(c\)](#)
- F18 Words substituted by [Social Security Act 1980 \(c. 30, SIF 113:1\)](#), [Sch. 4 para. 5\(1\)](#)
- F19 Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 20\(2\)](#)
- F20 Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 86, 88](#), [Sch. 10 para. 41\(2\)\(a\)](#)
- F21 Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 86, 88](#), [Sch. 10 para. 41\(2\)\(b\)](#)
- F22 Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 86, 88](#), [Sch. 10 para. 41\(2\)\(c\)](#)
- F23 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 66\(1\)](#), [Sch. 9 para. 10\(13\)\(d\)](#)
- F24 Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 66\(1\)](#), [Sch. 9 para. 10\(13\)\(c\)](#)
- F25 S. 87(6) repealed by [Social Security Act 1980 \(c. 30, SIF 113:1\)](#), [Sch. 5 Pt. II](#)

Modifications etc. (not altering text)

- C2 S. 87(2): power to modify conferred (S.) (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 2](#); [S.S.I. 2002/170, art. 2](#)
- C3 S. 87(3): power to modify conferred (S.) (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 2](#); [S.S.I. 2002/170, art. 2](#)

Marginal Citations

- M6 1948 c. 29.
- M7 1983 c. 41.

F26 **88**

Textual Amendments

- F26 S. 88 repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\) \(5\)](#), [Sch. 4 para. 15\(26\)](#), [Sch. 5](#) (with [s. 103\(1\)](#)); [S.I. 1996/3201, art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744, art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201](#) by [art. 3](#)))

89 F27

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Textual Amendments

F27 S. 89 repealed by [Tribunals and Inquiries Act 1971 \(c. 62, SIF 127\)](#), [Sch. 4 Pt. I](#)

90 Orders, regulations etc.

- (1) Any power to make regulations or orders ^{F28} ^{F29}, or to make rules conferred on the Secretary of State by this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument made in the exercise of any power to make regulations conferred by this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act to make orders shall include a power, exercisable in the like manner and subject to the same conditions, to vary or revoke any such order.

Textual Amendments

F28 Words in s. 90(1) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\), Sch. 4 para. 15\(27\), Sch. 5](#) (with s. 103(1)); [S.I. 1996/3201, art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744, art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201](#) by [art. 3](#)))

F29 Words repealed by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), s. 73(4)(c)(d), [Sch. 5 para. 63, Sch. 6](#)

91 Expenses.

There shall be defrayed out of moneys provided by Parliament—

- (a) any sums required for the payment of grants under this Act or any other expenses of the Secretary of State under this Act, and
- (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

92 Effect of Act on rate support grant.

- (1) The Secretary of State shall have power, by an order made in the like manner and subject to the like provisions as a rate support grant order, to vary the provisions of any rate support grant order made before the commencement of this Act for a grant period ending after the commencement of this Act.
- (2) Any order made by virtue of this section may be made for all or any of the years comprised in the said rate support grant period, as may be specified in the order, and in respect of the year or years so specified shall increase the annual aggregate amount of the rate support grants to such extent as may appear to the Secretary of State to be appropriate having regard to any additional expenditure incurred or likely to be incurred by councils of counties or of large burghs in consequence of the passing of this Act.
- (3) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by section 4 of the ^{M8}Local Government (Scotland) Act 1966

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(which confers power to vary rate support grant orders in consequence of unforeseen increases in the level of prices, costs or remuneration).

- (4) In this section the expressions “rate support grant order” and “grant period” have the meanings respectively assigned to them by subsection (1) and subsection (3) of section 3 of the ^{M9}Local Government (Scotland) Act 1966.

Marginal Citations

M8 1966 c. 51.

M9 1966 c. 51.

[^{F30}92A Powers of the Secretary of State to make grants.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities in respect of their functions under—

- (a) Part II of this Act; and
- (b) sections 7 and 8 of the Mental Health (Scotland) Act ^{M10}1984,
in relation to persons suffering from mental illness.]

Textual Amendments

F30 S. 92A inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 58

Marginal Citations

M10 1984 c. 36(85).

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