



National Health Service and Community Care Act 1990

1990 CHAPTER 19

PART IV

COMMUNITY CARE: SCOTLAND

51 Power of Secretary of State to give directions

After subsection (1) of section 5 (powers of Secretary of State) of the Social Work (Scotland) Act 1968 (in this Part of this Act referred to as “the 1968 Act”) there shall be inserted the following subsection—

“(1A) Without prejudice to subsection (1) above, the Secretary of State may issue directions to local authorities, either individually or collectively, as to the manner in which they are to exercise any of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act; and a local authority shall comply with any direction made under this subsection.”

52 Local authority plans for, and complaints in relation to, community care services in Scotland

After section 5 of the 1968 Act there shall be inserted the following sections—

“5A Local authority plans for community care services

- (1) Within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, and in accordance with the provisions of this section, each local authority shall prepare and publish a plan for the provision of community care services in their area.
- (2) Each local authority shall from time to time review any plan prepared by them under subsection (1) above, and shall, in the light of any such review, prepare and publish—

Status: This is the original version (as it was originally enacted).

- (a) any modifications to the plan under review; or
 - (b) if the case requires, a new plan.
- (3) In preparing any plan or carrying out any review under subsection (1) or, as the case may be, subsection (2) above the authority shall consult—
- (a) any Health Board providing services under the National Health Service (Scotland) Act 1978 in the area of the authority;
 - (b) in so far as the plan or, as the case may be, the review may affect or be affected by the provision or availability of housing, every district council in the area of the authority;
 - (c) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act, the local authority have a power or a duty to provide, or to secure the provision of, a service;
 - (d) such voluntary housing agencies and other bodies as appear to the authority to provide housing or community care services in their area; and
 - (e) such other persons as the Secretary of State may direct.
- (4) In this section—
- “community care services” means services, other than services for children, which a local authority are under a duty or have a power to provide, or to secure the provision of, under Part II of this Act or section 7 (functions of local authorities), 8 (provision of after-care services) or 11 (training and occupation of the mentally handicapped) of the Mental Health (Scotland) Act 1984; and
- “private carer” means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.

5B Complaints procedure

- (1) Subject to the provisions of this section, the Secretary of State may by order require local authorities to establish a procedure whereby a person, or anyone acting on his behalf, may make representations (including complaints) in relation to the authority’s discharge of, or failure to discharge, any of their functions under this Act, or any of the enactments referred to in section 2(2) of this Act, in respect of that person.
- (2) For the purposes of subsection (1) of this section, “person” means any person for whom the local authority have a power or a duty to provide, or to secure the provision of, a service, and whose need or possible need for such a service has (by whatever means) come to the attention of the authority.
- (3) An order under subsection (1) of this section may be commenced at different times in respect of such different classes of person as may be specified in the order.
- (4) In relation to a child, representations may be made by virtue of subsection (1) above by the child, or on his behalf by—

Status: This is the original version (as it was originally enacted).

- (a) his parent;
- (b) any person having parental rights in respect of him;
- (c) any local authority foster parent; or
- (d) any other person appearing to the authority to have a sufficient interest in the child's wellbeing to warrant his making representations on the child's behalf.

(5) In this section—

“child” means a child under the age of 18 years; and

“parent” and “parental rights” have the same meaning as in section 8 (interpretation) of the Law Reform (Parent and Child) (Scotland) Act 1986.

- (6) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) of this section and as to the taking of such action as may be necessary in consequence of such representations.
- (7) Every local authority shall give such publicity to the procedure established under this section as they consider appropriate.”

53 Inspection of premises providing accommodation

- (1) Section 6 of the 1968 Act (supervision of establishments and places providing accommodation etc) shall be amended as follows.
- (2) In subsection (1) after “place” insert “the facilities and services provided therein”.
- (3) In subsection (1), for the words “required to be kept therein” there shall be substituted “(in whatever form they are held) relating to the place or to any person for whom services have been or are provided there”.
- (4) After subsection (2) there shall be inserted the following subsections—
 - “(2A) Any such person may require the owner of, or any person employed in, the establishment or place in question to furnish him with such information as he may request.
 - (2B) In exercising the power to inspect records and registers under this section a person—
 - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or register in question; and
 - (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,to give him such reasonable assistance as he may require.
 - (2C) In exercising the power to inspect places under this section a person—
 - (a) may interview any person residing there in private—

Status: This is the original version (as it was originally enacted).

- (i) for the purpose of investigating any complaint as to that place or the services provided there; or
 - (ii) if he has reason to believe that the services being provided there for that person are not satisfactory; and
 - (b) may examine any such person in private.
- (2D) No person may—
- (a) exercise the power to inspect records or registers under subsection (1) or (2) above so as to inspect medical records; or
 - (b) exercise the power conferred by subsection (2C)(b) above, unless he is a registered medical practitioner and, in the case of the power conferred by subsection (1) or (2) above, the records or register relate to medical treatment given at the place in question.”

54 Inquiries

After section 6 of the 1968 Act there shall be inserted the following section—

“6A Inquiries

- (1) The Secretary of State may cause an inquiry to be held into the functions of a local authority under this Act or any of the enactments mentioned in section 2(2) of this Act, except in so far as those functions relate to persons under the age of 18.
- (2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given the person holding the inquiry may if he thinks fit hold it or any part of it in private.
- (3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.”

55 Duty of local authority to make assessment of needs

After section 12 of the 1968 Act there shall be inserted the following section—

“12A Duty of local authority to assess needs

- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—
 - (a) shall make an assessment of the needs of that person for those services; and
 - (b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.
- (2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.

Status: This is the original version (as it was originally enacted).

- (3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies—
- (a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board—
 - (i) in whose area he is ordinarily resident; or
 - (ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or
 - (b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,
- the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.
- (4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
- (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and
 - (b) inform him that they will be doing so and of his rights under that Act.
- (5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.
- (6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.
- (7) This section is without prejudice to section 3 of the said Act of 1986.
- (8) In this section—
- “community care services” has the same meaning as in section 5A of this Act;
 - “disabled person” has the same meaning as in the said Act of 1986; and
 - “medical practitioner” means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.”

56 Residential accommodation with nursing and provision of care and after-care

After section 13 of the 1968 Act there shall be inserted the following sections—

Status: This is the original version (as it was originally enacted).

“Residential accommodation with nursing

13A Residential accommodation with nursing

- (1) Without prejudice to section 12 of this Act, a local authority shall make such arrangements as they consider appropriate and adequate for the provision of suitable residential accommodation where nursing is provided for persons who appear to them to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.
- (2) The arrangements made by virtue of subsection (1) above shall be made with a voluntary or other organisation or other person, being an organisation or person managing premises which are—
 - (a) a nursing home within the meaning of section 10(2)(a) of the Nursing Homes Registration (Scotland) Act 1938 in respect of which that organisation or person is registered or exempt from registration under that Act; or
 - (b) a private hospital registered under section 12 of the Mental Health (Scotland) Act 1984,
 for the provision of accommodation in those premises.
- (3) The provisions of section 6 of this Act apply in relation to premises where accommodation is provided for the purposes of this section as they apply in relation to establishments provided for the purposes of this Act.

Provision of care and after-care

13B Provision of care and after-care

- (1) Subject to subsection (2) below, a local authority may, with the approval of the Secretary of State, and shall, if and to the extent that the Secretary of State so directs, make arrangements for the purpose of the prevention of illness, the care of persons suffering from illness, and the after-care of such persons.
- (2) The arrangements which may be made under subsection (1) above do not include arrangements in respect of medical, dental or nursing care, or health visiting.”

57 Exclusion of powers to provide accommodation in certain cases

After section 86 of the 1968 Act there shall be inserted the following section—

“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—

Status: This is the original version (as it was originally enacted).

- (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 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 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.”

58 Power of Secretary of State to make grants

After section 92 of the 1968 Act there shall be inserted the following section—

“92A Power 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 1984,
- in relation to persons suffering from mental illness.”