



# Social Work (Scotland) Act 1968

## 1968 CHAPTER 49

### PART II **S**

#### PROMOTION OF SOCIAL WELFARE BY LOCAL AUTHORITIES

##### Modifications etc. (not altering text)

**C1** Pt. II extended with modifications by [Guardianship Act 1973 \(c. 29\), s. 11\(5\)](#)

#### *General*

### 12 **General social welfare services of local authorities.** **S**

- (1) It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate, and such assistance may <sup>F1</sup>, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person..
- (2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is] in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the giving of assistance in another form, or where probable aggravation of the person's need would cause greater expense to the local authority on a later occasion.
- (3) Before giving assistance to, or in respect of, a person in cash under subsection (1) of this section a local authority shall have regard to his eligibility for receiving assistance from any other statutory body and, if he is so eligible, to the availability to him of that assistance in his time of need.

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- (4) Assistance given in kind or in cash to, or in respect of, persons under this section may be given unconditionally or subject to such conditions as to the repayment of the assistance, or of its value, whether in whole or in part, as the local authority may consider reasonable having regard to the means of the person receiving the assistance and to the eligibility of the person for assistance from any other statutory body.
- (5) Nothing in the provisions of this section shall affect the performance by a local authority of their functions under any other enactment.
- [<sup>F2</sup>(6) For the purposes of subsection (2) of this section “person in need” includes a person who is in need of care and attention arising out of drug or alcohol dependency or release from prison or other form of detention.]

#### Textual Amendments

- F1** Words in s. 12(1)(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(11)** (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**))
- F2** S. 12(6) 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(5)**

#### [<sup>F3</sup>12A **Duty of local authority to assess needs.** **S**

- (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.
- (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

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their said duty, the local authority shall take into account any information received by them in response to that request.

[ Subject to subsection (3B) below, in any case where—

- <sup>F4</sup>(3A) (a) a local authority make an assessment of the needs of any person (“the relevant person”) under subsection (1)(a) above, and  
(b) a person (“the carer”) provides or intends to provide a substantial amount of care on a regular basis for the relevant person,

the carer may request the local authority, before they make their decision under subsection (1)(b) above, to make an assessment of his ability to provide and to continue to provide care for the relevant person; and if he makes such a request, the local authority shall make such an assessment and shall have regard to the results of that assessment in making that decision.

(3B) No request may be made under subsection (3A) above by a person who provides or will provide the care in question—

- (a) by virtue of a contract of employment or other contract; or  
(b) as a volunteer for a voluntary organisation.

(3C) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty of local authority to take into account ability of carers) shall not apply in any case where an assessment is made under subsection (3A) above in respect of a person who provides the care in question for a disabled person.]

(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 <sup>M1</sup>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.]

[<sup>F5</sup>“person” means a natural person.]

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### Textual Amendments

- F3** S. 12A inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), [s. 55](#); [S.I. 1992/2975](#), [art. 2\(2\)](#), [Sch.](#)
- F4** [S. 12A\(3A\)-\(3C\)](#) inserted (1.4.1996) by [1995 c. 12](#), [ss. 2\(2\)](#), [5\(2\)](#)
- F5** S. 12A(8): definition of “person” inserted (1.4.1996) by [1995 c. 12](#), [ss. 2\(3\)](#), [5\(2\)](#)

### Modifications etc. (not altering text)

- C2** S. 12A(1) power to modify conferred (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 1\(7\)](#); [S.S.I. 2002/170](#), [art. 2](#)
- C3** S. 12A(1) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\)](#), [art. 2\(1\)](#)
- C4** S. 12A(2) power to modify conferred (1.4.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 1\(7\)](#); [S.S.I. 2002/170](#), [art. 2](#)
- C5** S. 12A(2) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\)](#), [art. 2\(1\)](#)

### Marginal Citations

- M1** [1986 c. 33](#) (113:1).

VALID FROM 01/09/2002

## <sup>F6</sup> 12AA Assessment of ability to provide care **S**

- (1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.
- (2) The local authority to whom the request is made shall—
  - (a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and
  - (b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—
    - (i) in the assessment of the person cared for; and
    - (ii) in making their decision under subsection (1)(b) of that section as respects that person.
- (3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—
  - (a) by virtue of a contract of employment or other contract; or
  - (b) as a volunteer for a voluntary organisation.
- (4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)(duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where

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a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.

(5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.

(6) In this section, “community care services”, “disabled person” and “person” have the same meanings as in section 12A of this Act.

#### Textual Amendments

**F6** Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); S.S.I. 2002/170, [art. 2](#)

VALID FROM 01/09/2002

#### **12AB Duty of local authority to provide information to carer** **S**

(1) Where it appears to a local authority both that—

- (a) a person aged eighteen or over (“the person cared for”) is a person for whom the authority are under a duty or have a power to provide community care services; and
- (b) another person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,

the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

(2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act.]

#### Textual Amendments

**F6** Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); S.S.I. 2002/170, [art. 2](#)

#### **[<sup>F7</sup>12B Direct payments in respect of community care services.** **S**

(1) Where, as respects a person in need—

- (a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and
- (b) the person is of a description which is specified for the purposes of this subsection by regulations,

the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.

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(2) If—

- (a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and
- (b) the person to whom the payment is made satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,

the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.

(3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations.

(4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.

(5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—

- (a) that it has been used to secure the provision of the service to which it relates, or
- (b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,

they may require the payment or, as the case may be, the part of the payment to be repaid.

(6) Regulations under this section shall be made by the Secretary of State and may—

- (a) make different provision for different cases; and
- (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.]

**Textual Amendments**

F7 S. 12B inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

**Modifications etc. (not altering text)**

C6 S. 12B(1) restricted (1.4.1997) by S.I. 1997/693, reg. 4(1)

[<sup>F8</sup>12C **Further provisions relating to direct payments.** **S**

(1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.

(2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.

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- (3) The fact that an authority make a payment under section 12B(1) of this Act shall not affect their functions under section 12 of this Act in relation to the provision, to the person to whom the payment is made, of assistance, in exceptional circumstances constituting an emergency, in cash in respect of the service to which the payment under section 12B(1) relates.]

#### Textual Amendments

**F8** S. 12C inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

### 13 Power of local authorities to assist persons in need in disposal of produce of their work. **S**

Where, by virtue of [<sup>F9</sup>section 12 of this Act], a local authority make arrangements or provide or secure the provision of facilities for the engagement of persons in need (whether under a contract of service or otherwise) in suitable work, that local authority may assist such persons in disposing of the produce of their work.

#### Textual Amendments

**F9** Words in s. 13 substituted (1.4.1997) by 1996 c. 30, s. 5; S.I. 1997/756, art. 2

*[<sup>F10</sup> Residential accommodation with nursing.]*

#### Textual Amendments

**F10** S. 13A and crossheading inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 56; S.I. 1992/2975, art. 2(2), Sch.

### 13A <sup>F11</sup>Residential accommodation with nursing. **S**

- (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 nursing home within the meaning of section 10(2)(a) of the Nursing Homes Registration (Scotland) Act <sup>M2</sup>1938 in respect of which that organisation or person is registered or exempt from registration under that Act; or
  - a private hospital registered under section 12 of the Mental Health (Scotland) Act <sup>M3</sup>1984,
- for the provision of accommodation in those premises.

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- (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.

**Textual Amendments**

**F11** S. 13A and crossheading inserted (1.4.1993) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 56; S.I. 1992/2975, art. 2(2), [Sch.](#)

**Marginal Citations**

**M2** 1938 c. 73 (113:3).

**M3** 1984 c. 36 (85).

*F12 Provision of care and after-care*

**Textual Amendments**

**F12** S. 13B and crossheading inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), s. 56; S.I. 1990/2510, art. 2, [Sch.](#)

**[13B** <sup>F13</sup> **Provision of care and after-care** **S**

- (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.]

**Textual Amendments**

**F13** S.13B and crossheading inserted (1.4.1991) by [National Health Service and Community care Act 1990 \(c.19, SIF 113:2\)](#), s. 56; S.I. 1990/2510, art. 2, [Sch.](#)

*Home help*

**14 Home help and laundry facilities.** **S**

- (1) It shall be the duty of every local authority to provide on such scale as is adequate for the needs of their area, or to arrange for the provision on such a scale as is so adequate of, [<sup>F14</sup>home help][<sup>F14</sup>domiciliary services] for households where such [<sup>F15</sup>help is][<sup>F15</sup>services are] required owing to the presence, or the proposed presence, of a person in need or a person who is an expectant mother or lying-in, and every such authority shall have power to provide or arrange for the provision of laundry facilities for households for which [<sup>F16</sup>home help is][<sup>F16</sup>domiciliary services are] being, or can be, provided under this subsection.

- (2) . . . . . <sup>F17</sup>



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(3) ..... F18

(4) On the coming into operation of the provisions of this and the last two foregoing sections, the provisions of sections 13, 44 and 45 of the Health Services and Public Health Act 1968<sup>M4</sup> shall cease to have effect.

#### Textual Amendments

- F14** Words “domiciliary services” substituted (1.4.1991) for “home help” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(6)(a)**
- F15** Words “services are” substituted (1.4.1991) for “help is” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(6)(b)**
- F16** Words “domiciliary services are” substituted (1.4.1991) for “home help is” by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(6)(c)**
- F17** S. 14(2) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **Sch. 10 Pt. I**
- F18** S. 14(3) repealed by National Health Service (Scotland) Act 1972 (c. 58, SIF 113:3), **Sch. 7 Pt. II**

#### Modifications etc. (not altering text)

- C7** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M4** 1968 c. 46.

### *Special provisions as to the care of children in need*

**F19** 15 ..... **S**

#### Textual Amendments

- F19** S. 15 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

**F20** 16 ..... **S**

#### Textual Amendments

- F20** S. 16 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 4); S.I. 1996/3201, **art. 3(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**))

**F21** 16A ..... **S**

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**Textual Amendments**  
**F21** S. 16A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

**F22** **17** .....



**Textual Amendments**  
**F22** S. 17 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

**F23** **17A** .....



**Textual Amendments**  
**F23** S. 17A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

**F24** **17B** .....



**Textual Amendments**  
**F24** S. 17B repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

**F25** **17C** .....



**Textual Amendments**  
**F25** S. 17C repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

**F26** **17D** .....



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**Textual Amendments**

**F26** S. 17D repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

<sup>F27</sup> **17E** ..... **S**

**Textual Amendments**

**F27** S. 17E repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

<sup>F28</sup> **18** ..... **S**

**Textual Amendments**

**F28** S. 18 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F29</sup> **18A** ..... **S**

**Textual Amendments**

**F29** S. 18A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

**19** ..... <sup>F30</sup> **S**

**Textual Amendments**

**F30** S. 19 repealed by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), s. 22, **Sch. 3** and expressed to be repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**

<sup>F31</sup> **20** ..... **S**

**Textual Amendments**

**F31** S. 20 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with savings in ss. 103(1), 105(3), Sch. 3 para. 6); S.I. 1996/3201, **art. 3(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**))

**Status:** Point in time view as at 01/04/1997. This version of this part contains provisions that are not valid for this point in time.

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<sup>F32</sup> **20A** ..... **S**

**Textual Amendments**

**F32** S. 20A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F33</sup> **21** ..... **S**

**Textual Amendments**

**F33** S. 21 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F34</sup> **22** ..... **S**

**Textual Amendments**

**F34** S. 22 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F35</sup> **23** ..... **S**

**Textual Amendments**

**F35** S. 23 repealed (1.4.1997) by 1995 c. 36, ss. 28, 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F36</sup> **24** ..... **S**

**Textual Amendments**

**F36** S. 24 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

<sup>F37</sup> **25** ..... **S**

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#### Textual Amendments

**F37** S. 25 repealed (1.4.1997) by 1995 c. 36, ss. 30(4), 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

**F38** **25A** ..... **S**

#### Textual Amendments

**F38** S. 25A repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

**F39** **26** ..... **S**

#### Textual Amendments

**F39** S. 26 repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(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**))

*Supervision and care of persons put on probation or released from prisons etc.*

**[F40** **27** **Supervision and care of persons put on probation or released from prisons etc.** **S**

- (1) It shall be a function of every local authority under this Part of this Act to provide a service for the following purposes, that is to say—
  - (a) making available to any court such social background reports and other reports relating to persons appearing before the court which the court may require for the disposal of a case
  - [F41**(aa) making available to any children’s hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence, as the hearing may require for the disposal of a case;
  - (ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;]
  - (b) the supervision of, and the provision of advice, guidance and assistance for—
    - (i) persons in their area who are under supervision by order of a court made in exercise of its criminal jurisdiction by virtue of any enactment, and
    - (ii) persons in their area who, following on release from prison or any other form of detention, are required to be under supervision under any enactment or by the terms of an order or licence of the Secretary

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of State or of a condition or requirement imposed in pursuance of any enactment.

- [<sup>F42</sup>(and) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area who are subject to a community service order under [<sup>F43</sup>section 238 of the Criminal Procedure (Scotland) Act 1995] or a probation order which includes a requirement that the offender shall perform unpaid work][<sup>F44</sup>; and]
  - <sup>F44</sup>(iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under [<sup>F45</sup>section 235 of the said Act of 1995].] [<sup>F46</sup>; and]
  - [<sup>F47</sup>(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order made under section 57(2)(d) of the Criminal Procedure (Scotland) Act 1995; and
  - (vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person; and
  - (vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and]
  - [<sup>F46</sup>(c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.]
- (2) For the purposes of the foregoing subsection every local authority shall, after consultation with the sheriffs having jurisdiction in their area, prepare a scheme (hereinafter referred to as a [<sup>F48</sup>probation, community service and supervised attendance scheme]) and submit it by such date, as he may require, to the Secretary of State for his approval.
- (3) A [<sup>F48</sup>probation, community service and supervised attendance scheme] shall make provision with regard to the following matters—
- (a) the manner in which any report requested by the court from the local authority is to be prepared and submitted to the court;
  - [<sup>F49</sup>(aa) the matters to be included in such a report;]
  - (b) arrangements for the attendance of officers of the local authority at the court;
  - (c) arrangements for the co-operation of the local authorities with the courts, and such arrangements may include the appointment of one or more sheriffs having jurisdiction in their areas to [<sup>F50</sup>a committee or sub-committee of such authorities];
  - (d) arrangements for the keeping of adequate records and statistics regarding the performance of functions under this section; and
  - (e) such other matters as the local authority considers relevant to the service to be provided.
- (4) The Secretary of State may approve a [<sup>F48</sup>probation, community service and supervised attendance scheme] with or without modifications.
- (5) A local authority may apply to the Secretary of State for the revision of a [<sup>F48</sup>probation, community service and supervised attendance scheme] and, if the Secretary of State so requires, shall prepare and submit to the Secretary of State for his approval a revised scheme or a modification of an existing scheme.

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- (6) Any function required by any enactment to be performed by a probation officer shall, after the coming into operation of this Part of this Act, be performed by an officer of the appropriate local authority.
- (7) Section 11 of and Schedule 3 to the <sup>M5</sup>Criminal Justice (Scotland) Act 1949 (administrative provisions as to probation) shall cease to have effect.]

#### Textual Amendments

- F40** Word and s. 27(1)(b)(iii) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **Sch. 2 para. 1(a)**
- F41** S. 27(1)(aa)(ab) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(a)** (which insertion fell (1.8.1997) by reason of the repeal of 1995 c. 40, **Sch. 4 para. 6(4)(a)** by 1997 c. 48, s. 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.**)
- F42** Word and s. 27(1)(b)(iii) added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **Sch. 2 para. 1(a)**
- F43** Words in s. 27(1)(b)(iii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(b)**
- F44** S. 27(1)(b)(iv) and the word “; and” immediately preceding it inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 62(5), **Sch. 6 para. 8(a)**; S.I. 1991/850, art. 3, **Schedule**
- F45** Words in s. 27(1)(b)(iv) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(c)**
- F46** S. 27(1)(c) and the word “; and” immediately preceding it added (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(4)(a); S.I. 1991/850, art. 3, **Schedule**
- F47** S. 27(1)(b)(v)-(vii) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 6(4)(d)** (which insertion fell (1.8.1997) by reason of the repeal of 1995 c. 40, **Sch. 4 para. 6(4)(d)** by 1997 c. 48, s. 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.**)
- F48** Words in s. 27(4) substituted (1.4.1991) by virtue of Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 62(5), **Sch. 6 para. 8(b)**; S.I. 1991/850, art. 3, **Schedule**
- F49** S. 27(3)(aa) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(4)(b); S.I. 1991/850, art. 3, **Schedule**
- F50** Words in s. 27(3)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 76(9)**; S.I. 1996/323, art. 4(1)(b)(c)

#### Modifications etc. (not altering text)

- C8** The text of ss. 2(4), 3(9), 14(4), 27(7), 95(2), Sch. 2 Pt. II paras. 7, 18, Sch. 8 paras. 6, 7(1)(3), 8–16, 32–34, 37–43, 60, 68, 73, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M5** 1949 c. 94.

### [<sup>F51</sup>27A Grants in respect of community service facilities **S**

[ The Secretary of State may make to a local authority grants of such amount and subject <sup>F52</sup>(1)] to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in providing a service

[ for the purposes mentioned in section 27(1) of this Act; and <sup>F53</sup>(a)

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- (b) for such other similar purposes as the Secretary of State may prescribe.
- (2) Before exercising his power under subsection (1)(b) above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.]]

#### Textual Amendments

- F51** S. 27A inserted by Community Service by [Offenders \(Scotland\) Act 1978 \(c. 49, SIF 39:1\)](#), [s. 9](#)
- F52** In s. 27A “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(5\)\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F53** S. 27A(1)(a)(b)(2) substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(5\)\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule

#### [<sup>F54</sup>27B Grants in respect of hostel accommodation for persons under supervision. **S**

[ The Secretary of State may make to a local authority grants of such amount and subject <sup>F55</sup>(1) to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority under this Act in—

- (a) providing; or
- (b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of, residential accommodation wholly or mainly for the persons mentioned in [<sup>F56</sup>subsection (2) below.
- (2) The persons referred to in subsection (1) above are—
- (a) persons mentioned in section 27(1)(b)(i) and (ii) of this Act;
- (b) persons who have been charged with an offence and are on bail;
- (c) persons who have been released from prison or any other form of detention but do not fall within section 27(1)(b)(ii) of this Act; and
- (d) such other classes of persons as the Secretary of State may prescribe.
- (3) Before exercising his power under subsection (2)(d) above the Secretary of State shall consult local authorities and such other persons as he considers appropriate.]]

#### Textual Amendments

- F54** S. 27B inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 79](#)
- F55** In s. 27B “(1)” inserted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(6\)\(a\)](#); S.I. 1991/850, [art. 3](#), Schedule
- F56** S. 27B(2)(3) and the words “subsection (2) below.” preceding them substituted (1.4.1991) for words by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(6\)\(b\)](#); S.I. 1991/850, [art. 3](#), Schedule



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## Ancillary

### 28 Burial or cremation of the dead. **S**

- (1) A local authority may cause to be buried or cremated the body of any deceased person who immediately before his death was in the care of, or receiving assistance from [<sup>F57</sup>or was a child being looked after by,], the authority:

Provided that the authority shall not cause the body to be cremated where cremation is not in accordance with the practice of the person's religious persuasion.

- (2) An authority may recover from the estate of the deceased person or from any person who was liable to maintain the deceased person immediately before his death expenses incurred under subsection (1) of this section . . . <sup>F58</sup>

- [<sup>F59</sup>(3) In subsection (1) of this section, the reference to a child being looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.]

#### Textual Amendments

**F57** Words in s. 28(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(12)(a)** (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**))

**F58** Words repealed by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88, **Sch. 11**

**F59** S. 28(3) added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(12)(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**))

#### Modifications etc. (not altering text)

**C9** S. 28 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

### 29 Power of local authority to defray expenses of parent, etc., visiting persons or attending funerals. **S**

- (1) A local authority may make payments to any parent, relative or other person connected with [<sup>F60</sup>—

(a) a person, other than a child, in the care of the authority or receiving assistance from the authority; or

(b) a child who is being looked after by the authority,

in respect] of travelling, subsistence or other expenses incurred by the parent, relative or other person in visiting the person [<sup>F61</sup>or child], if it appears to the authority that the parent, relative or other person would not otherwise be able to visit [<sup>F62</sup>him] without undue hardship and that the circumstances warrant the making of the payments.

- (2) A local authority may make the like payments and in the like circumstances to any parent, relative or other person connected with [<sup>F63</sup>—

(a) a person, other than a child, who had been in the care of the authority or receiving assistance from the authority; or

(b) a child who had been looked after by the authority,

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for] the purpose of that parent, relative or other person attending the funeral of the person.

[<sup>F64</sup>(3) In subsections (1) and (2) above, references to a child looked after by a local authority shall be construed as is mentioned in subsection (3) of section 28 of this Act.]

#### Textual Amendments

- F60** Words in s. 29(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(13)(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**))
- F61** Words in s. 29(1) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(13)(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**))
- F62** Word in s. 29(1) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(13)(a)(iii)** (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**))
- F63** Words in s. 29(2) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(13)(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**))
- F64** S. 29(3) added (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(13)(c)** (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**))

#### Modifications etc. (not altering text)

- C10** S. 29 applied by Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:2), s. 413(3) as substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), s. 59(3)

**Status:**

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