



# 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.

<sup>F2</sup>[(2A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies is not to receive assistance under subsection (1) of this section (whether by way of residential accommodation or otherwise) if his need for assistance has arisen solely—

- (a) because he is destitute; or

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- (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- <sup>F2</sup>(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.]
- (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.
- <sup>F3</sup>(3A) In determining, for the purposes of this section, whether to make available assistance by providing, or securing the provision of, residential accommodation to a person, a local authority shall disregard so much of the person’s resources—
- (a) as may be prescribed; or
  - (b) as is determined by them in such a way as may be prescribed,
- and any order made by virtue of this subsection may make different provision for different cases and for different persons.
- (3B) An order made by virtue of paragraph (a) of subsection (3A) of this section may prescribe circumstances in which assistance such as is mentioned in that subsection is to be made available disregarding entirely a person’s resources.
- (3C) In subsections (3A) and (3B) of this section, references to a person’s resources are to resources within the meaning of the order prescribing the amount, or as the case may be the way, in question.
- (3D) A statutory instrument made in exercise of the power conferred by paragraph (a) or (b) of subsection (3A) of this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.]
- (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>F4</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(2A)(2B) inserted (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1999 c. 33, s. **120(1)** (with **Sch. 15 para. 7**); S.I. 2000/464, **art. 2**, **Sch.**

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**F3** S. 12(3A)-(3D) substituted (1.7.2002) for s. 12(3A)(3B) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 3](#); [S.S.I. 2002/170, art. 2](#)

**F4** 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\(5\)](#)

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

**C2** S. 12 restricted (8.1.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 54, Sch. 3 para. 1\(1\)\(c\)](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)

**C3** S. 12(1) modified (prosp.) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), ss. 5\(1\), 27\(2\)](#)

**[<sup>F5</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

[<sup>F6</sup>(b) shall then decide, having regard to the results of that assessment, and taking account—

(i) where it appears to them that a person (“ the carer ”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and

(ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view),

whether the needs of the person being assessed 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 their said duty, the local authority shall take into account any information received by them in response to that request.

(3A) <sup>F7</sup> .....

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- (3B) <sup>F8</sup> .....
- (3C) <sup>F9</sup> .....
- (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>F10</sup> “person” means a natural person. ]

#### Textual Amendments

- F5** 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.](#)
- F6** S. 12A(1)(b) substituted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 8](#); [S.S.I. 2002/170](#), [art. 2](#)
- F7** S. 12A(3A)-(3C) repealed (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 9\(1\)](#); [S.S.I. 2002/170](#), [art. 2](#)
- F8** S. 12A(3A)-(3C) repealed (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 9\(1\)](#); [S.S.I. 2002/170](#), [art. 2](#)
- F9** S. 12A(3A)-(3C) repealed (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), [s. 9\(1\)](#); [S.S.I. 2002/170](#), [art. 2](#)
- F10** S. 12A(8): definition of “person” inserted (1.4.1996) by [1995 c. 12](#), [ss. 2\(3\)](#), [5\(2\)](#)

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

- C4** 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](#)
- C5** S. 12A(1) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\)](#), [art. 2\(1\)](#)

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- C6** 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](#)
- C7** 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 \(113:1\)](#).

## [<sup>F11</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 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

- F11** 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](#)

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## 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

**F11** 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>F12</sup>[<sup>F11</sup>12B] Direct payments in respect of community care services. S

- (1) Where, as respects [<sup>F13</sup>any person]—
- (a) a local authority
    - [ have decided under section 12A of this Act that his needs call for the <sup>F14</sup>(i)] provision of any service which is a community care service [<sup>F15</sup>; or
    - (ii) have a duty to provide a service to him under section 22(1) of the Children (Scotland) Act 1995 (c.36) (promotion of welfare of children in need) other than a service which comprises giving assistance in cash;] and
  - (b) the person is [<sup>F16</sup>not] of a description which is specified for the purposes of this subsection by regulations,
- the authority [<sup>F17</sup>shall, if and while (the payment having been offered by the authority) either the person consents or consent is duly given on his behalf,] , 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 [<sup>F18</sup>determine to be appropriate] .
- <sup>F19</sup>(1A) The amount of any payment made, under subsection (1) above, with or without first assessing the person’s ability to contribute to securing the provision of the service in question, may be determined on the supposition that he has no such ability; but this subsection is subject to subsection (5A) below.
- (1B) Consent is duly given as mentioned in subsection (1) above if—
- (a) the authority are satisfied that the person on whose behalf it is given is himself incapable of giving it; and
  - (b) the person who gives it is of a category specified for the purposes of that subsection by regulations,
- and such regulations may authorise the person so consenting to intromit with the payment and to do anything requisite to secure the provision of the service.

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- (1C) The reference in subsections (1) to (1B) above to securing the provision of the service is to securing its provision by any person, including the authority themselves (provided that both they and the consenting person so wish) or any other local authority.]
- (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
- <sup>F20</sup>[(a)] that the [<sup>F21</sup>duty imposed by subsection (1) above shall not apply] 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;
  - <sup>F22</sup>(b) impose preconditions which must be fulfilled if the service concerned is, by virtue of that subsection, to be provided by the authority by whom the payment under that subsection is made and special conditions which shall apply as respects a service so provided by them;
  - (c) specify circumstances in which the authority are not required to make payments under that subsection (whether circumstances relating to the person in question or to the service in question or to both);
  - (d) specify circumstances in which the authority may or must terminate the making of such payments; and
  - (e) authorise such payments to be made, on behalf of the payee, to some other person of a category specified, for the purposes of this subsection, by 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.
- <sup>F23</sup>(5A) An authority who have made a determination by virtue of subsection (1A) above in respect of a payment—
- (a) having first assessed the recipient's ability to contribute to securing the provision of the service in question, may; or
  - (b) other than is mentioned in paragraph (a) above, shall thereafter make such an assessment and may,

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having regard to the assessment, require from him such repayment as appears to them appropriate.

(5B) If the person from whom a repayment is required under subsection (5A) above satisfies the authority that, notwithstanding the assessment to which regard was had in making the requirement, his means are insufficient for it to be reasonably practicable for him to make that repayment, the authority shall adjust the requirement so that the amount to be repaid becomes an amount which appears to them to be reasonably practicable for him to repay.]

(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.

[<sup>F24</sup>(7) The definition of “community care [<sup>F25</sup>services]” in section 5A of this Act shall, with the modification mentioned in subsection (8) below, apply for the purposes of this section as that definition applies for the purposes of that section.

(8) The modification is that the words “, other than services for children,” in the definition shall be disregarded.]

#### Textual Amendments

- F11** 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](#)
- F12** S. 12B inserted (S.)(1.4.1997) by [1996 c. 30, s. 4; S.I. 1997/756, art. 2](#)
- F13** Words in s. 12B(1) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(a\)\(i\); S.S.I. 2002/170, art. 2](#)
- F14** Words in s. 12B(1)(a) re-numbered (20.12.2001) as s. 12B(1)(a)(i) by virtue of [2001 asp 8, s. 70\(a\)\(i\); S.S.I. 2001/304, art. 2\(2\)](#)
- F15** S. 12B(1)(a)(ii) and the word "or" immediately preceding it substituted (20.12.2001) for words in s. 12B(1)(a) by [2001 asp 8, s. 70\(a\)\(ii\); S.S.I. 2001/304, art. 2\(2\)](#)
- F16** Word in s. 12B(1)(b) inserted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(a\)\(ii\); S.S.I. 2002/170, art. 2](#)
- F17** Words in s. 12B(1) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(a\)\(iii\); S.S.I. 2002/170, art. 2](#)
- F18** Words in s. 12B(1) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(a\)\(iv\); S.S.I. 2002/170, art. 2](#)
- F19** S. 12B(1A)-(1C) inserted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(b\); S.S.I. 2002/170, art. 2](#)
- F20** Words in s. 12B(4) renumbered (1.6.2003) as s. 12B(4)(a) by virtue of [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(c\); S.S.I. 2002/170, art. 2](#)
- F21** Words in s. 12B(4)(a) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(c\); S.S.I. 2002/170, art. 2](#)
- F22** S. 12B(4)(b)-(e) inserted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(c\); S.S.I. 2002/170, art. 2](#)
- F23** S. 12B(5A)(5B) inserted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 7\(d\); S.S.I. 2002/170, art. 2](#)
- F24** S. 12B(7)(8) inserted (20.12.2001) by [2001 asp 8, s. 70\(b\); S.S.I. 2001/304, art. 2\(2\)](#)
- F25** Words in s. 12B(7) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 25, {Sch. 2, para. 1\(2\)}; S.S.I. 2002/170, art. 2](#)



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

C8 S. 12B(1) restricted (1.4.1997) by [S.I. 1997/693](#), [reg. 4\(1\)](#)

### [<sup>F26</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 [<sup>F27</sup>subsection (1) of section 12B] 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 [<sup>F28</sup>(except in so far as it is provided by them by virtue of that subsection)] as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of [<sup>F29</sup>that subsection] .
- (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

- F26** S. 12C inserted (S.)(1.4.1997) by [1996 c. 30, s. 4](#); [S.I. 1997/756, art. 2](#)
- F27** Words in s. 12C(2) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 25, Sch. 2 para. 1\(3\)\(a\)](#); [S.S.I. 2002/170, art. 2](#)
- F28** Words in s. 12C(2) inserted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 25, Sch. 2 para. 1\(3\)\(b\)](#); [S.S.I. 2002/170, art. 2](#)
- F29** Words in s. 12C(2) substituted (1.6.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), s. 25, Sch. 2 para. 1\(3\)\(c\)](#); [S.S.I. 2002/170, 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>F30</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

- F30** Words in s. 13 substituted (1.4.1997) by [1996 c. 30, s. 5](#); [S.I. 1997/756, art. 2](#)

### [<sup>F31</sup>13ZA Provision of services to incapable adults **S**

- (1) Where—
  - (a) a local authority have decided under section 12A of this Act that an adult's needs call for the provision of a community care service; and

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- (b) it appears to the local authority that the adult is incapable in relation to decisions about the service,  
the local authority may take any steps which they consider would help the adult to benefit from the service.
- (2) Without prejudice to the generality of subsection (1) above, steps that may be taken by the local authority include moving the adult to residential accommodation provided in pursuance of this Part.
- (3) The principles set out in subsection (2) to (4) of section 1 of the 2000 Act apply in relation to any steps taken under subsection (1) above as they apply to interventions in the affairs of an adult under or in pursuance of that Act.
- (4) Subsection (1) does not authorise a local authority to take steps if they are aware that—
- (a) there is a guardian or welfare attorney with powers relating to the proposed steps;
  - (b) an intervention order has been granted relating to the proposed steps; or
  - (c) an application has been made (but not yet determined) for an intervention order or guardianship order under Part 6 of the 2000 Act relating to the proposed steps.
- (5) In this section—
- (a) “the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4);
  - (b) “adult” has the meaning given in section 1(6) of the 2000 Act;
  - (c) “community care service” has the meaning given in section 5A of this Act;
  - (d) “incapable” has the meaning given in section 1(6) of the 2000 Act;
  - (e) “intervention order” is to be construed in accordance with section 53 of the 2000 Act”;
  - (f) the reference to a guardian includes a reference to—
    - (i) a guardian appointed under the 2000 Act; and
    - (ii) a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland;
  - (g) the reference to a welfare attorney includes a reference to—
    - (i) a welfare attorney within the meaning of section 16 of the 2000 Act; and
    - (ii) a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's personal welfare and having effect during the granter's incapacity.]

#### **Textual Amendments**

**F31** S. 13ZA inserted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 64, 79(2)

*Status: Point in time view as at 22/03/2007.*

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### *[<sup>F32</sup> Residential accommodation with nursing.]*

#### Textual Amendments

**F32** 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>F33</sup>**Residential accommodation with nursing.** **S**

(1) Without prejudice to section 12 of this Act, a local authority shall

- <sup>F34</sup>(a) provide and maintain;]<sup>F35</sup> or]
- <sup>F36</sup>(b) 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.

<sup>F37</sup>(2) <sup>F38</sup>. . . 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 providing—

- (a) an independent health care service which is a private psychiatric hospital; or
- (b) a care home service.

(2A) Expressions used in subsection (2) above have the same meanings as in the Regulation of Care (Scotland) Act 2001 (asp 8).]

(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.

<sup>F39</sup>[(4) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

<sup>F39</sup>(5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.]

#### Textual Amendments

**F33** 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.](#)

**F34** S. 13A(1)(a) inserted (1.4.2002) by [2001 asp 8](#), [s. 72\(a\)\(i\)](#); [S.S.I. 2002/162](#), [art. 2](#) (with [arts. 3-13](#))

**F35** Word in s. 13A(1) inserted (1.4.2002) by [2001 asp 8](#), [s. 72\(a\)\(ii\)](#); [S.S.I. 2002/162](#), [art. 2](#) (with [arts. 3-13](#))

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- F36** Words in s. 13A(1) renumbered (1.4.2002) as s. 13A(1)(b) by virtue of 2001 asp 8, s. 72(a)(iii); S.S.I. 2002/162, **art. 2** (with arts. 3-13)
- F37** S. 13A(2)(2A) substituted (1.4.2002) for s. 13A(2) by 2001 asp 8, s. 79, Sch. 3 para. 4(3); S.S.I. 2002/162, **art. 2** (with arts. 3-13)
- F38** Word in s. 13A(2) repealed (1.4.2002) by 2001 asp 8, s. 72(b); S.S.I. 2002/162, **art. 2** (with arts. 3-13) and 2002 asp 5, s. 25, **Sch. 2 para. 1(4)**; S.S.I. 2002/170, **art. 2**
- F39** S. 13A(4)(5) inserted (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1999 c. 33, s. **120(2)**; S.I. 2000/464, **art. 2, Sch.**

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

- C9** S. 13A restricted (8.1.2003) by **Nationality, Immigration and Asylum Act 2002 (c. 41), s. 54, Sch. 3 para. 1(1)(c)**; S.I. 2002/2811, **art. 2**
- C10** S. 13A(1) modified (prosp.) by **Community Care and Health (Scotland) Act 2002 (asp 5), ss. 5(1), 27(2)**
- C11** S. 13A(2) excluded (prosp.) by **Community Care and Health (Scotland) Act 2002 (asp 5), ss. 5(4), 27(2)**
- C12** S. 13A(3) excluded (prosp.) by **Community Care and Health (Scotland) Act 2002 (asp 5), ss. 5(4), 27(2)**

*F40 Provision of care and after-care*

**Textual Amendments**

- F40** 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 F41 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.]
- [<sup>F42</sup>(3) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—
- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- <sup>F42</sup>(4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.]

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#### Textual Amendments

- F41** 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.](#)
- F42** S. 13B(3)(4) inserted (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1999 c. 33, s. [120\(3\)](#); [S.I. 2000/464](#), 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>F43</sup>home help][<sup>F43</sup>domiciliary services] for households where such [<sup>F44</sup>help is][<sup>F44</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>F45</sup>home help is][<sup>F45</sup>domiciliary services are] being, or can be, provided under this subsection.
- (2) ..... <sup>F46</sup>
- (3) ..... <sup>F47</sup>
- (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>M2</sup> shall cease to have effect.

#### Textual Amendments

- F43** 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\(6\)\(a\)](#)
- F44** 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\(6\)\(b\)](#)
- F45** 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\(6\)\(c\)](#)
- F46** S. 14(2) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [Sch. 10 Pt. I](#)
- F47** 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)

- C13** 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

- M2** [1968 c. 46](#).

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

<sup>F48</sup> **15** ..... **S**

**Textual Amendments**

**F48** 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**))

<sup>F49</sup> **16** ..... **S**

**Textual Amendments**

**F49** 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**))

<sup>F50</sup> **16A** ..... **S**

**Textual Amendments**

**F50** 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)**

<sup>F51</sup> **17** ..... **S**

**Textual Amendments**

**F51** 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**))

<sup>F52</sup> **17A** ..... **S**

**Textual Amendments**

**F52** 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**))

<sup>F53</sup> **17B** ..... **S**

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**Textual Amendments**

**F53** 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**))

<sup>F54</sup> **17C** ..... 

**Textual Amendments**

**F54** 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**))

<sup>F55</sup> **17D** ..... 

**Textual Amendments**

**F55** 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>F56</sup> **17E** ..... 

**Textual Amendments**

**F56** 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>F57</sup> **18** ..... 

**Textual Amendments**

**F57** 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>F58</sup> **18A** ..... 

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**Textual Amendments**

**F58** 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>F59</sup> **S**

**Textual Amendments**

**F59** 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>F60</sup> **20** ..... **S**

**Textual Amendments**

**F60** 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**))

<sup>F61</sup> **20A** ..... **S**

**Textual Amendments**

**F61** 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>F62</sup> **21** ..... **S**

**Textual Amendments**

**F62** 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>F63</sup> **22** ..... **S**

**Textual Amendments**

**F63** 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**))



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F64 **23** ..... **S**

**Textual Amendments**

**F64** 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**))

F65 **24** ..... **S**

**Textual Amendments**

**F65** 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**))

F66 **25** ..... **S**

**Textual Amendments**

**F66** 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**))

F67 **25A** ..... **S**

**Textual Amendments**

**F67** 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**))

F68 **26** ..... **S**

**Textual Amendments**

**F68** 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**))

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

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

(1) [<sup>F69</sup>Subject to any order or determination under section 8 of the Management of Offenders etc. (Scotland) Act 2005 (asp 14),] 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

[<sup>F70</sup>(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;]

[<sup>F71</sup>(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;]

[<sup>F72</sup>(ac) the provision of advice, guidance and assistance for persons who are in prison or subject to any other form of detention and who—

(i) resided in their area immediately prior to such imprisonment or detention; or

(ii) intend to reside in their area on release from such imprisonment or detention,

and who on release from such imprisonment or detention, it appears to the local authority, will be required to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;]

[<sup>F73</sup>(ad) making available, for the purposes of parenting orders under section 13 or 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), such services as are required to enable requirements imposed by or under such orders to be carried out in respect of persons in their area;]

[<sup>F74</sup>(ae) making available to the Scottish Ministers such background and other reports as the Scottish Ministers may request in relation to the exercise of their functions under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9);]

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

[<sup>F75</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>F76</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>F77</sup>; and]

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- [<sup>F77</sup>(iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under [<sup>F78</sup>section 235 of the said Act of 1995]. . .
  - [<sup>F79</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;]
  - [<sup>F80</sup>(va) without prejudice to sub-paragraph (i) above, persons in their area who are subject to community reparation orders under section 245K of the said Act of 1995;
    - (vb) without prejudice to sub-paragraph (i) above, persons in their area who are under 16 years of age and subject to restriction of liberty orders under section 245A of the said Act of 1995;]
  - [<sup>F81</sup>(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;
  - [<sup>F82</sup>(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>F83</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.]
- [<sup>F84</sup>(1A) A local authority may provide advice, guidance or assistance for any person who—
- (a) would fall to be provided for under paragraph (ac) of subsection (1) above but for the fact that it appears to the local authority that he will not be required to be under any form of supervision on release as mentioned in that paragraph; and
  - (b) requests such advice, guidance or assistance.
- (1B) Where as respects any person more than one local authority is required by paragraph (ac) of subsection (1) to make such provision as is mentioned in that paragraph, they may agree between themselves that only one of them shall do so; and where there is such agreement the paragraph shall apply accordingly.]
- [<sup>F85</sup>(1C) In paragraphs (ac) and (b)(i) and (ii) of subsection (1) above, “enactment” includes an Act of the Scottish Parliament.
- (1D) The Scottish Ministers may by order amend subsection (1) above so as (any or all)—
- (a) to add to the functions for the time being described;
  - (b) to omit any of those functions;
  - (c) to alter any of those functions.]
- (2) For the purposes of [<sup>F86</sup>subsection (1) above] every local authority shall, <sup>F87</sup>..., prepare a scheme (hereinafter referred to as a [<sup>F88</sup>community justice][<sup>F89</sup>scheme]) and submit it by such date, as he may require, to the Secretary of State for his approval.
- (3) A [<sup>F90</sup>community justice][<sup>F89</sup>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>F91</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;

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- (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>F92</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>F93</sup>community justice<sup>F89</sup>scheme] with or without modifications.
- (5) A local authority may apply to the Secretary of State for the revision of a <sup>F94</sup>community justice<sup>F89</sup>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.
- <sup>F95</sup>(5A) Before including in a community justice scheme which is made, revised or modified under this section provision for the purposes of subsection (1)(b)(va), a local authority shall consult such persons or class or classes of person as the Scottish Ministers may by regulations prescribe.
- (5B) The Scottish Ministers may give local authorities directions in writing as to the content of community justice schemes; and authorities shall comply with any such directions.
- (5C) The power conferred by subsection (5B) above to give a direction shall include power to vary or revoke the direction.]
- (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>M3</sup> Criminal Justice (Scotland) Act 1949 (administrative provisions as to probation) shall cease to have effect.

#### Textual Amendments

- F69** Words in s. 27(1) inserted (3.4.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\), ss. 21\(1\)\(a\)\(i\), 24\(2\)](#); S.S.I. 2006/48, art. 3(2), sch. Pt. 2
- F70** S. 27(1)(aa) inserted after paragraph (a) (1.8.1997) by 1997 c. 48, s. 32(a); S.I. 1997/1712, art. 3, Sch.
- F71** S. 27(1)(ab) inserted after paragraph (a) (1.8.1997) by 1997 c. 48, s. 32(b); S.I. 1997/1712, art. 3, Sch.
- F72** S. 27(1)(ac) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 71\(2\), 89\(2\)](#); S.S.I. 2003/288, art. 2, sch.
- F73** S. 27(1)(ad) inserted (4.4.2005) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\), s. 145\(2\), sch. 4 para. 1\(a\)\(i\)](#); S.S.I. 2004/420, art. 3, sch. 5
- F74** S. 27(1)(ae) inserted (8.2.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\), ss. 21\(1\)\(a\)\(ii\), 24\(2\)](#); S.S.I. 2006/48, art. 3(1), sch. Pt. 1
- F75** 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\(a\)](#)
- F76** Words in s. 27(1)(b)(iii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 6\(4\)\(b\)](#)
- F77** 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
- F78** Words in s. 27(1)(b)(iv) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 6\(4\)\(c\)](#)

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- F79** S. 27(1)(b)(v) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(c); S.I. 1997/1712, art. 3, **Sch.**
- F80** S. 27(1)(b)(va)(vb) inserted (28.10.2004 for specified purposes, 4.4.2005 in so far as not already in force) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(a)(ii)**; S.S.I. 2004/420, art. 3, sch. 1, sch. 5
- F81** S. 27(1)(b)(vi) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(d); S.I. 1997/1712, art. 3, **Sch.**
- F82** S. 27(1)(b)(vii) inserted after sub-paragraph (iv) of paragraph (b) (1.8.1997) by 1997 c. 48, s. 32(e); S.I. 1997/1712, art. 3, **Sch.**
- F83** 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**
- F84** S. 27(1A) (1B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 71(3), 89(2); S.S.I. 2003/288, art. 2, sch.
- F85** S. 27(1C)(1D) inserted (8.2.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), ss. 21(1)(b), 24(2); S.S.I. 2006/48, art. 3(1), sch. Pt. 1
- F86** Words in s. 27(2) substituted (8.2.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), ss. 21(1)(c), 24(2); S.S.I. 2006/48, art. 3(1), sch. Pt. 1
- F87** Words in s. 27(2) repealed (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 5**; S.S.I. 2004/420, art. 3, sch. 1
- F88** Words in s. 27(2) substituted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(b)**; S.S.I. 2004/420, art. 3, sch. 1
- F89** 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**
- F90** Words in s. 27(3) substituted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(b)**; S.S.I. 2004/420, art. 3, sch. 1
- F91** 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**
- F92** 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)
- F93** Words in s. 27(4) substituted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(b)**; S.S.I. 2004/420, art. 3, sch. 1
- F94** Words in s. 27(5) substituted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(b)**; S.S.I. 2004/420, art. 3, sch. 1
- F95** S. 27(5A)-(5C) inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **sch. 4 para. 1(c)**; S.S.I. 2004/420, art. 3, sch. 1

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

- C14** 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

- M3** 1949 c. 94.

### [<sup>F96</sup>27ZA] Advice, guidance and assistance to persons arrested or on whom sentence deferred **S**

- (1) It shall be a function of a local authority, if and to such extent as the Scottish Ministers so direct and in accordance with the direction, to provide, directly or indirectly, advice,

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guidance and assistance to any person (and in particular to any person who appears to the local authority to have dependency problems)—

- (a) who is arrested and detained in police custody in their area, but only during the period of such detention; or
  - (b) on whom sentence is deferred under section 202(1) of the 1995 Act, but only during the period of deferment and while that person is in their area.
- (2) The function mentioned in subsection (1)(a) above may continue to be exercised by the local authority while the person is in their area for a period not exceeding 12 months from the date of his release from police custody.
- (3) In subsection (1) above, “ dependency problems ” means problems relating to a dependency on drugs, alcohol or some other substance. ]

#### Textual Amendments

**F96** S. 27ZA inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 71\(4\), 89\(2\); S.S.I. 2003/288, art. 2, sch.](#)

### <sup>F97</sup>27A Grants in respect of community service facilities **S**

<sup>F98</sup><sup>F99</sup>(1) The Scottish Ministers may (any or all)—

- (a) pay to a community justice authority, for allocation under section 3(5)(e)(i) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) as grants to the local authorities within its area;
- (b) make a grant to a local authority of;
- (c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 8(2) or (3) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of expenditure incurred by, as the case may be, those local authorities, that local authority or that community justice authority, in providing a relevant service.]

<sup>F100</sup>(1A) [ In a case where two or more local authorities are discharging any function mentioned in section 27(1) or 27ZA of this Act jointly, whether or not in accordance with arrangements made under section 56(5) of the Local Government (Scotland) Act 1973 (c. 65), the power of the Scottish Ministers to make grants under subsection (1) above in respect of expenditure incurred for the purposes mentioned in paragraph (a) of that subsection includes a power to make such grants, on such conditions as are mentioned in that subsection, to a local authority nominated by the local authorities from among their number.]

<sup>F98</sup>(1A) In subsection (1) above, a “relevant service” means a service—

- (a) for the purposes mentioned in section 27(1) of this Act;
- (b) for enabling those local authorities, that local authority or that community justice authority to comply with the area plan prepared by the community justice authority under section 3(5)(a)(i) of that Act of 2005; or
- (c) for such other similar purposes as the Scottish Ministers may prescribe.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.]

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[<sup>F101</sup>(2) Before exercising his power under subsection [<sup>F102</sup>(1)(c)] above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.]]

#### Textual Amendments

- F97** S. 27A inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), s. 9
- F98** S. 27A(1)-(1B) substituted for s. 27A(1) (3.4.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), ss. 21(2)(a), 24(2); S.S.I. 2006/48, art. 3(2), sch. pt. 2
- F99** 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
- F100** S. 27A(1A) beginning with the words "In a case where two or more local authorities" inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 72, 89(2); S.S.I. 2003/288, art. 2, sch.
- F101** S. 27A(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
- F102** Words in s. 27A(2) substituted (3.4.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), ss. 21(2)(b), 24(2); S.S.I. 2006/48, art. 3(2), sch. pt. 2

[<sup>F103</sup>27B Grants in respect of hostel accommodation for persons under supervision. **S**]

- [ The Scottish Ministers may (any or all)—
- <sup>F104</sup>[  
<sup>F105</sup>(1)] (a) pay to a community justice authority, for allocation under section 3(5)(e)(ii) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) as grants to the local authorities within its area;
- (b) make a grant to a local authority of;
- (c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 8(2) or (3) of that Act of 2005, of,
- such amount as the Scottish Ministers may determine in respect of relevant expenditure.
- (1A) In subsection (1) above, “relevant expenditure” means expenditure incurred by, as the case may be, those local authorities or that local authority 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 subsection (2) below.
- (1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.]
- [<sup>F106</sup>(2) The persons referred to in [<sup>F107</sup>subsection (1A)] 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.]]

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#### Textual Amendments

- F103** S. 27B inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 79](#)
- F104** S. 27B(1)-(1B) substituted for s. 27B(1) (3.4.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 21\(3\)\(a\)](#), 24(2); S.S.I. 2006/48, art. 3(2), [sch. pt. 2](#)
- F105** 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](#)
- F106** S. 27B(2)(3) substituted for words (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 39:1\)](#), [s. 61\(6\)\(b\)](#); S.I. 1991/850, art. 3, [Schedule](#)
- F107** Words in s. 27B(2) substituted (3.4.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 21\(3\)\(b\)](#), 24(2); S.S.I. 2006/48, art. 3(2), [sch. pt. 2](#)

#### *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>F108</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>F109</sup>

- <sup>F110</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

- F108** 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](#)))
- F109** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), [ss. 86, 88](#), [Sch. 11](#)
- F110** 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)

- C15** 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>F111</sup>—



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- (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>F112</sup>or child], if it appears to the authority that the parent, relative or other person would not otherwise be able to visit [<sup>F113</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>F114</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,
- for] the purpose of that parent, relative or other person attending the funeral of the person.
- [<sup>F115</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

- F111** 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**))
- F112** 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**))
- F113** 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**))
- F114** 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**))
- F115** 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)

- C16** 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:**

Point in time view as at 22/03/2007.

**Changes to legislation:**

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