



# Social Work (Scotland) Act 1968

## 1968 CHAPTER 49

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **84 Transfer of assets and liabilities.**

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

#### **85** .....<sup>F1</sup>

##### **Textual Amendments**

**F1** S. 85 repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 4 Pt.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

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

- (1) Any expenditure which apart from this section would fall to be borne by a local authority—
  - (a) in the provision under this Act [<sup>F2</sup>, or under [<sup>F3</sup> section [<sup>F3</sup> subsection]]] 25 of the Children (Scotland) Act 1995,] of accommodation for a person ordinarily resident in the area of another local authority, or

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- (b) in the provision under Part II of this Act <sup>[F4]</sup>, or under or by virtue of Part II of the said Act of 1995, of services and facilities for a person ordinarily so resident (including, in the case of a child, any expenses incurred after he has ceased to be a child, and, in the event of another local authority taking over, under section 25(4) of that Act, the provision of accommodation for him,] including also any travelling or other expenses incurred in connection with the taking over), or
- <sup>[F5]</sup>(ba) in making a payment under section 12B of this Act in relation to the provision of a service for a person ordinarily so resident; or]
- (c) for the conveyance of a person ordinarily resident as aforesaid, or
- (d) in administering a supervision requirement in respect of a person ordinarily resident as aforesaid, <sup>[F6]</sup>or]
- <sup>[F7]</sup>(e) in the provision, for persons ordinarily so resident, of services under section 25 (care and support services for persons who have or who have had a mental disorder), 26 (services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);]
- shall be recoverable from the other local authority, and in this subsection any reference to another local authority includes a reference to a local authority in England or Wales.
- (2) Any question arising under this section as to the ordinary residence of a person shall be determined by the Secretary of State, and the Secretary of State may determine that a person has no ordinary residence.
- (3) In determining for the purposes of subsection (1) of this section the ordinary residence of any person or child, <sup>[F8]</sup>any period during which he is provided with accommodation under this Act or under sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),] any period during which he was a patient in a <sup>[F9]</sup>health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29))] or, in the case of a child, any period during which he resided in any place as an inmate of a school or other institution, or in accordance with the requirements of a supervision requirement, supervision order <sup>[F10]</sup>, community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995, <sup>[F11]</sup>youth rehabilitation order] or probation order or the conditions of a recognizance, or while boarded out under this Act or under <sup>F12</sup> . . . the <sup>M1</sup>Children and Young Persons (Scotland) Act 1937 by a local authority or education authority <sup>[F13]</sup>or placed with local authority foster parents under the Children Act 1989 <sup>[F14]</sup>or provided with accommodation under paragraph (a) of, or by virtue of paragraph (c) of, section 26(1) of the Children (Scotland) Act 1995] shall be disregarded.
- <sup>[F15]</sup>(4) This subsection applies where a local authority (“the responsible authority”) performs a function under—
- (a) this Act;
- (b) Part II of the Children (Scotland) Act 1995 (c. 36); or
- (c) section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),
- by making arrangements with a person (“the provider”) in terms of which the provider undertakes to accommodate, or to secure accommodation for, another person.
- (5) Where subsection (4) applies—

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- (a) any expenditure incurred under the arrangements by a provider which is a local authority is recoverable from the responsible authority; and
  - (b) any period during which the person is accommodated under the arrangements is to be disregarded in determining the person's ordinary residence for the purposes of subsection (1) of this section.
- (6) The Scottish Ministers may make regulations specifying circumstances in which a local authority (“the providing authority”) may recover from another local authority (“the other authority”) expenditure which the providing authority incurs in the provision of services or facilities under arrangements made with the other authority for the purpose of enabling that other authority to perform a function under—
- (a) this Act;
  - (b) Part II of the Children (Scotland) Act 1995 (c. 36); or
  - (c) section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).
- (7) The Scottish Ministers may make regulations specifying circumstances which must be taken into account, or disregarded, when determining a person's ordinary residence for the purposes of subsection (1) of this section (and such regulations may modify subsection (2), (3) and (5)(b) of this section).
- (8) Regulations made under subsection (6) or (7) of this section may—
- (a) make different provision for different cases and for different persons;
  - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Scottish Ministers think fit.
- (9) Despite section 90(2) of this Act, no statutory instrument containing regulations made under subsection (7) of this section which includes provisions which modify this section may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
- (10) References in subsections (4) to (6) of this section to a local authority which is providing accommodation, service or facilities include references to a local authority in England or Wales.]

#### Textual Amendments

- F2** Words in s. 86(1)(a) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F3** Word in s. 86(1) substituted (S.) (5.10.2007) by **Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 65(1)(a)(i), 79(3)**; S.S.I. 2007/334, art. 2(b), sch. 2
- F4** Words in s. 86(1)(b) substituted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(24)(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F5** S. 86(1)(ba) inserted (S.) (5.10.2007) by **Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 65(1)(a)(ii), 79(3)**; S.S.I. 2007/334, art. 2(b), sch. 2
- F6** S. 86(1)(e) and the word “or” immediately preceding it inserted (1.4.1991) by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 10(11)**

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- F7** S. 86(1)(e) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 1\(7\)](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F8** Words in s. 86(3) inserted (S.) (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 65\(1\)\(b\)\(i\)](#), 79(3); S.S.I. 2007/334, art. 2(b), sch. 2
- F9** Words in s. 86(3) substituted (S.) (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 65\(1\)\(b\)\(ii\)](#), 79(3); S.S.I. 2007/334, art. 2(b), sch. 2
- F10** Words in s. 86(3) inserted (S.) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 2 para. 31\(3\)](#); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F11** Words in s. 86(3) inserted (30.11.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 4 para. 12](#) (with [Sch. 27 paras. 1, 5](#)); S.I. 2009/3074, art. 2(p)(iii)
- F12** Words in s. 86(3) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch. 15](#); S.I. 1991/828, [art. 3\(2\)](#)
- F13** Words in s. 86(3) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 23](#); S.I. 1991/828, [art. 3\(2\)](#)
- F14** Words in s. 86(3) inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36](#), s. 105(4), [Sch. 4 para. 15\(24\)\(b\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, [art. 2](#) (with transitional provisions inserted into S.I. 1996/3201 by [art. 3](#)))
- F15** S. 86(4)-(10) inserted (S.) (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 65\(1\)\(c\)](#), 79(3); S.S.I. 2007/334, art. 2(b), sch. 2

#### Marginal Citations

- M1** 1937 c. 37.

**F16** **86A** .....

#### Textual Amendments

- F16** S. 86A ceases to have effect (8.4.2002) by virtue of [2001 c. 15](#), s. 50(1), [Sch. 6 Pt. III](#) (with [ss. 64\(9\)](#), [65\(4\)](#)); S.I. 2001/3752, [art. 2\(1\)](#); and s. 86A repealed (15.4.2002) by [2001 c. 15](#), s. 67, [Sch. 6 Pt. 3](#); S.I. 2002/1312, [art. 3\(b\)](#)

#### **87 Charges that may be made for services and accommodation.**

<sup>F17</sup>(1) Subject to sections 78 and 78A of this Act (contributions in respect of maintainable children) and to the following provisions of this section, a local authority providing a service under this Act [<sup>F18</sup>or <sup>F19</sup>section 7 (functions of local authorities) or 8 (provision of after-care services) of the [Mental Health \(Scotland\) Act 1984](#)]<sup>F19</sup>section 25 (care and support services for persons who have or have had a mental disorder), 26 (services designed to promote well-being and social development of such persons) or 27 (assistance with travel in connection with such services) of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#) [<sup>F20</sup>or under or by virtue of Part II of the [Children \(Scotland\) Act 1995](#)] may recover such charge (if any) for it as they consider reasonable.

(1A) If a person—

- (a) avails himself of a service provided under this Act [<sup>F21</sup>or<sup>F22</sup>section 7 or 8 of the said Act of 1984]<sup>F22</sup>section 25, 26 or 27 of the [Mental Health \(Care and](#)

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Treatment) (Scotland) Act 2003 (asp 13)]<sup>F20</sup> or under or by virtue of Part II of the Children (Scotland) Act 1995]; and

- (b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

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

<sup>F23</sup>(1B) Subsections (1) and (1A) above do not apply as respects any amount required not to be charged by subsection (1) of section 1 of the Community Care and Health (Scotland) Act 2002 (asp 5)(charging and not charging for social care) or required to be charged or not to be charged by virtue of subsection (4) of that section.]

(2) Persons, other than maintainable children, for whom accommodation is provided under this Act [<sup>F24</sup> or ]<sup>F25</sup>section 7 of the said Act of 1984]<sup>F25</sup>section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)], shall be required to pay for that accommodation in accordance with the subsequent provisions of this section.

(3) Subject to the following provisions of this section, accommodation provided under this Act [<sup>F24</sup> or ]<sup>F26</sup>section 7 of the said Act of 1984]<sup>F26</sup>section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)] shall be regarded as accommodation provided under Part III of the <sup>M2</sup>National Assistance Act 1948, and [<sup>F27</sup>sections 22(2) to (8)] and 26(2) to (4) [<sup>F28</sup>(as amended by any enactment within the meaning of the Scotland Act 1998 (c. 46)) of the said Act of 1948] shall apply accordingly.

(4) In the application of the said section 22, for any reference to the Minister there shall be substituted a reference to the Secretary of State, and in the application of the said section 26, any references to arrangements under a scheme for the provision of accommodation shall be construed as references to arrangements made by a local authority with a voluntary organisation [<sup>F29</sup> or any other person or body] for the provision of accommodation under this Act [<sup>F30</sup> or ]<sup>F31</sup>section 7 of the said Act of 1984]<sup>F31</sup>section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)].

(5) The Secretary of State may, with the consent of the Treasury, make regulations for modifying or adjusting the rates at which payments under this section are made, where such a course appears to him to be justified, and any such regulations may provide for the waiving of any such payment in whole or in part in such circumstances as may be specified in the regulations.

(6) ..... <sup>F32</sup>

#### Textual Amendments

**F17** S. 87(1)(1A) substituted for s. 87(1) by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 18

**F18** Words inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 10\(13\)\(a\)](#)

**F19** Words in s. 87(1) substituted (S.) (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 28\(1\)\(a\)](#), 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

**F20** Words in s. 87(1)(1A) inserted (S.) (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 15\(25\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(6\)\(7\)](#) (which said art.

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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** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(b)**
- F22** Words in s. 87(1A)(a) substituted (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 28(1)(b)**, 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F23** S. 87(1B) inserted (S.) (1.7.2002) by Community Care and Health (Scotland) Act 2002 (asp 5), **s. 1(6)**; S.S.I. 2002/170, **art. 2**
- F24** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(c)**
- F25** Words in s. 87(2) substituted (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 28(1)(c)**, 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F26** Words in s. 87(3) substituted (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 28(1)(c)**, 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F27** Words substituted by Social Security Act 1980 (c. 30, SIF 113:1), **Sch. 4 para. 5(1)**
- F28** Words in s. 87(3) substituted (S.) (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 62(2)**, 79(3); S.S.I. 2007/334, art. 2(b), sch. 2; and words in s. 87(3) substituted (6.4.2009 except in relation to local authorities in W., 6.4.2009 for W.) by Health and Social Care Act 2008 (c. 14), **ss. 147(4)**, 170(3)(4) (with Sch. 13); S.I. 2009/462, art. 4(a); S.I. 2009/631, art. 2(a)
- F29** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(d)**
- F30** Words inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 10(13)(c)**
- F31** Words in s. 87(4) substituted (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 28(1)(c)**, 333(2); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F32** S. 87(6) repealed by Social Security Act 1980 (c. 30, SIF 113:1), **Sch. 5 Pt. II**

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

- C1** S. 87(2): power to modify conferred (S.) (1.4.2002) by Community Care and Health (Scotland) Act 2002 (asp 5), **s. 2**; S.S.I. 2002/170, **art. 2**
- C2** S. 87(3): power to modify conferred (S.) (1.4.2002) by Community Care and Health (Scotland) Act 2002 (asp 5), **s. 2**; S.S.I. 2002/170, **art. 2**

**Marginal Citations**

- M2** 1948 c. 29.

<sup>F33</sup>**88** .....

**Textual Amendments**

- F33** S. 88 repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4) (5), **Sch. 4 para. 15(26)**, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))



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89 ..... F34

**Textual Amendments**

**F34** S. 89 repealed by Tribunals and Inquiries Act 1971 (c. 62, SIF 127), Sch. 4 Pt. I

**90 Orders, regulations etc.**

- (1) Any power to make regulations or orders <sup>F35</sup> . . . . . <sup>F36</sup>, or to make rules conferred on the Secretary of State by this Act shall be exercisable by statutory instrument.
- (2) Any statutory instrument made in the exercise of any power to make regulations conferred by this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act to make orders shall include a power, exercisable in the like manner and subject to the same conditions, to vary or revoke any such order.
- [<sup>F37</sup>(4) A statutory instrument containing an order under section 27(1D) or 27A(1A)(c) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

**Textual Amendments**

- F35** Words in s. 90(1) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(27), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(6)(7) (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, art. 2 (with transitional provisions inserted into S.I. 1996/3201 by art. 3))
- F36** Words repealed by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c)(d), Sch. 5 para. 63, Sch. 6
- F37** S. 90(4) added (8.2.2006) by Management of Offenders etc. (Scotland) Act 2005 (asp 14), ss. 21(4), 24(2); S.S.I. 2006/48, art. 3(1), sch. Pt. 1

**91 Expenses.**

There shall be defrayed out of moneys provided by Parliament—

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

**92 Effect of Act on rate support grant.**

- (1) The Secretary of State shall have power, by an order made in the like manner and subject to the like provisions as a rate support grant order, to vary the provisions of any rate support grant order made before the commencement of this Act for a grant period ending after the commencement of this Act.
- (2) Any order made by virtue of this section may be made for all or any of the years comprised in the said rate support grant period, as may be specified in the order, and in respect of the year or years so specified shall increase the annual aggregate amount

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of the rate support grants to such extent as may appear to the Secretary of State to be appropriate having regard to any additional expenditure incurred or likely to be incurred by councils of counties or of large burghs in consequence of the passing of this Act.

- (3) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by section 4 of the <sup>M3</sup>Local Government (Scotland) Act 1966 (which confers power to vary rate support grant orders in consequence of unforeseen increases in the level of prices, costs or remuneration).
- (4) In this section the expressions “rate support grant order” and “grant period” have the meanings respectively assigned to them by subsection (1) and subsection (3) of section 3 of the <sup>M4</sup>Local Government (Scotland) Act 1966.

#### Marginal Citations

- M3** 1966 c. 51.  
**M4** 1966 c. 51.

### [<sup>F38</sup>92A Powers of the Secretary of State to make grants.

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

- (a) Part II of this Act; and  
 (b) [<sup>F39</sup>sections 25 to 31 of the Mental Health (Care and Treatment) (Scotland) Act 2003]<sup>M5</sup>,

in relation to persons suffering from mental illness.]

#### Textual Amendments

- F38** S. 92A inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 58  
**F39** Words in s. 92A substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 4\(3\)](#)

#### Marginal Citations

- M5** 1984 c. 36(85).

### *Supplementary*

### 93 Transitional provisions.

The transitional provisions set out in Schedule 7 to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.



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## 94 Interpretation.

(1) In this Act, except where otherwise expressly provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

“approved school” means a school approved by the Secretary of State under section 79 of the <sup>M6</sup>Children and Young Persons Act 1933,

“approved school order” has the meaning assigned to it by section 107(1) of the <sup>M7</sup>Children and Young Persons Act 1933,

F40 . . .

F41 . . .

F42 . . .

“constable” means a constable of a police force within the meaning of the <sup>M8</sup>Police (Scotland) Act 1967,

“contributor” and “contribution order” have the meanings respectively assigned to them by sections 78 and 80 of this Act,

[<sup>F43</sup> “domiciliary services” means any services, being services provided in the home, which appear to a local authority to be necessary for the purpose of enabling a person to maintain as independent an existence as is practicable in his home; ]

“establishment” means an establishment managed by a local authority, voluntary organisation or any other person, which provides non-residential accommodation for the purposes of this Act [<sup>F44</sup>or of Part II of the Children (Scotland) Act 1995,] whether for reward or not,

“functions” shall include powers and duties,

F45 . . .

[<sup>F46</sup> “hospital” has the meaning assigned to it by section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003]

“local authority”, in relation to Scotland, has the meaning assigned to it by section 1(2) of this Act,

“maintainable child” has the meaning assigned to it by section 78 of this Act,

[<sup>F47</sup> “mental health officer” means a person appointed under subsection (1) of section 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); and includes a person deemed, by virtue of subsection (3) of that section, to be so appointed; ]

“mental health officer” means an officer of a local authority appointed to act as a mental health officer for the purposes of the [<sup>F48</sup>said Act of 1984],

[<sup>F49</sup> “parent” means either parent or both parents, except that where the child was born out of wedlock and the parents have not subsequently married each other it means the natural mother but not the natural father; ]

“performance”, in relation to functions, includes the exercise of powers as well as the performance of duties, and “perform” shall be construed accordingly,

“persons in need” means persons who,

- (a) are in need of care and attention arising out of infirmity, youth or age; or
- (b) suffer from illness or mental disorder or are substantially handicapped by any deformity or disability; or

(c) . . . . . F50

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- (d) being persons prescribed by the Secretary of State who have asked for assistance, are, in the opinion of a local authority, persons to whom the authority may appropriately make available the services and facilities provided by them under this Act,

<sup>F51</sup>  
...

[<sup>F52</sup> “ prescribed ” means—

- (a) in [<sup>F53</sup> section 3] prescribed by regulations,  
(b) <sup>F54</sup> .....  
(c) in sections [<sup>F55</sup> 12(3A),][<sup>F56</sup> 27A, 27B,], . . . , 94, paragraphs 2(2) and (3), 4(3) and (4) of Schedule 7, prescribed by order,

[<sup>F57</sup> and “ prescribe ” shall be construed accordingly. ]]

[<sup>F58</sup> “probation order”, in relation to an order imposed by a court in Northern Ireland, has the same meaning as in the Criminal Justice (Northern Ireland) Order 1996,]

“residential establishment” means an establishment managed by a local authority, voluntary organisation or any other person, which provides residential accommodation for the purposes of this Act [<sup>F59</sup> or of Part II of the Children (Scotland) Act 1995], whether for reward or not,

<sup>F60</sup>  
...

“supervision order”, in relation to an order imposed by a court in England or Wales, [<sup>F61</sup> means a supervision order under <sup>F62</sup>... Act or the Children Act 1989], and in relation to an order imposed by a court in Northern Ireland [<sup>F63</sup> means a supervision order under the Children and Young Persons Act (Northern Ireland) 1968 or the Children (Northern Ireland) Order 1995],

“supervision requirement” has the meaning assigned to it by [<sup>F64</sup> section 70(1) of the Children (Scotland) Act 1995],

[<sup>F65</sup> “ training school ” has the meaning assigned to it by section 180(1) of the Children and Young Persons Act (Northern Ireland) 1968; ]

“training school order” means an order made by a court in Northern Ireland sending a child or young person to a training school,

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority,

“welfare authority” means a welfare authority constituted under the <sup>M9</sup>Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946.

[<sup>F66</sup> “youth rehabilitation order” means an order made under section 1 of the Criminal Justice and Immigration Act 2008.]

- (2) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied by or under any other enactment including this Act.
- (3) Without prejudice to the last foregoing subsection, any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modifications.

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## Textual Amendments

- F40** S. 94(1): definition of “children's panel” and “children's hearing” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(a), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F41** S. 94(1): definition of “compulsory measures of care” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(b), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F42** Words in s. 94(1) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 37 Pt. 7**; S.I. 2005/950, **art. 2(1)**, **Sch. 1 para. 44(4)(d)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))
- F43** Definition 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(14)(a)**
- F44** S. 94(1): words in the definition of “establishment” inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(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**))
- F45** S. 94(1): definition of “guardian” repealed (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(d), **Sch. 5**; S.I. 1996/2203, **art. 3(3)**, **Sch.**, Table (with arts. 4-7)
- F46** Words in s. 94(1) substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 1 para. 4(4)(a)**
- F47** Words in s. 94(1) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 4 para. 1(8)**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)
- F48** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 17(c)**
- F49** S. 94(1): definition of “parent” substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(e)** (with s. 103(1)); S.I. 1996/2203, **art. 3**, **Sch.** (with arts. 4-7)
- F50** Para (c) repealed by Housing (Homeless Persons) Act 1977 (c. 48, SIF:61), **Sch.**
- F51** S. 94(1): definition of “place of safety” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(f), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F52** Definition inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 64(1)**
- F53** S.94(1): words in the definition of “prescribed” in para. (a) substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(g)(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**))
- F54** S. 94(1): para. (b) in the definition of “prescribed” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 15(28)(g)(ii), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (S.) (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F55** Words in s. 94(1) inserted (1.7.2002) by Community Care and Health (Scotland) Act 2002 (asp 5), s. 25, **Sch. 2 para. 1(5)**; S.S.I. 2002/170, **art. 2**
- F56** Words in s. 94(1) inserted (01. 04. 1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(7); S.I. 1991/850, **art. 3 Sch.**
- F57** Words inserted by Registered Establishments (Scotland) Act 1987 (c. 40, SIF 81:3), s. 6(2)(b)

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- F58** Words in s. 94(1) substituted (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 4 para. 13(a)** (with Sch. 27 paras. 1, 5); S.I. 2009/3074, art. 2(p)(iii)
- F59** S. 94(1): words in the definition of “residential establishment” inserted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(h)** (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**))
- F60** S. 94(1): definition of “school age” repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4)(5), **Sch. 4 para. 15(28)(i)**, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(6)(7)** (which said art. 3(7) was substituted (7.3.1997) by S.I. 1997/744, **art. 2** (with transitional provisions inserted into S.I. 1996/3201 by **art. 3**))
- F61** Words in s. 94(1) substituted (14. 10. 1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 36**; S.I. 1991/1883, **art. 3 Sch.**
- F62** Words in s. 94(1) repealed (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 4 para. 13(b)**, **Sch. 28 Pt. 1** (with Sch. 27 paras. 1, 5); S.I. 2009/3074, art. 2(p)(iii)(u)
- F63** S. 94(1): words in the definition of “supervision order” substituted (4.11.1996) by S.I. 1995/756, **art. 5(6)**; S.R. 1996/297, **art. 3**
- F64** S. 94(1): words in the definition of “supervision requirement” (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(j)** (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**))
- F65** S. 94(1): definition of “training school” substituted (12.12.1996 for certain purposes and otherwise 1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 15(28)(k)** (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**))
- F66** Words in s. 94(1) inserted (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 4 para. 13(c)** (with Sch. 27 paras. 1, 5); S.I. 2009/3074, art. 2(p)(iii)

#### Marginal Citations

- M6** 1933 c. 12.  
**M7** 1933 c. 12.  
**M8** 1967 c. 77.  
**M9** 1946 c. 19 (N.I.)

## 95 Minor and consequential amendments, repeals and savings.

- (1) The enactments described in Schedule 8 to this Act shall have effect subject to the amendments therein specified, being minor amendments and amendments consequential on the foregoing provisions of this Act.
- (2) The enactments described in Schedule 9 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Subject to any expression in this Act to the contrary, in so far as any appointment, agreement or any provision in a regulation or order made or any notice, direction, consent, approval, warrant or certificate given under any enactment repealed by this Act or registration effected, or deemed to have been effected, proceedings instituted or other thing done under any such enactment could have been made, passed, given, granted, effected, instituted or done under a corresponding provision of this Act, it shall not be invalidated by this repeal, but shall have effect as if it had been made, passed, given, granted, effected, instituted or done to that corresponding provision and may be amended, varied, revoked or enforced accordingly, and, in the case of any legal proceedings, may be continued and appealed against as if this Act had not been passed.

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

- C3** 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, 59A, 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.

**96** ..... <sup>F67</sup>

#### Textual Amendments

- F67** S. 96 repealed by [Northern Ireland Constitution Act 1973 \(c. 36, SIF 29:3\)](#), **Sch. 6 Pt. I**

### **97 Extension of certain provisions of Act to England and Wales, Northern Ireland and the Channel Islands.**

- (1) The following provisions of this Act shall extend to England and Wales, that is to say—

<sup>F68</sup>  
...  
<sup>F68</sup>  
...  
sections 86 and 87  
<sup>F68</sup>  
...  
[<sup>F69</sup>section 98(3) and Schedule 2 paragraphs 7 and 13]  
Schedule 8  
Part II of Schedule 9.

<sup>F70</sup>(2) .....

<sup>F70</sup>(3) .....

- (4) Save as aforesaid, and except in so far as it relates to the interpretation or commencement of the provisions, this Act shall extend only to Scotland.

#### Textual Amendments

- F68** Words in s. 97 repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 15\(29\)\(a\)](#), [Sch. 5](#) (with [s. 103\(1\)](#)); [S.I. 1996/3201](#), [art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744](#), [art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201](#) by [art. 3](#)))
- F69** Words inserted by [Children and Young Persons Act 1969 \(c. 54, SIF 20\)](#), [s. 73\(4\)\(c\)](#), [Sch. 5 para. 65](#)
- F70** S. 97(2)(3) repealed (12.12.1996 for certain purposes and otherwise 1.4.1997) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 15\(29\)\(b\)](#), [Sch. 5](#) (with [s. 103\(1\)](#)); [S.I. 1996/3201](#), [art. 3\(6\)\(7\)](#) (which said art. 3(7) was substituted (7.3.1997) by [S.I. 1997/744](#), [art. 2](#) (with transitional provisions inserted into [S.I. 1996/3201](#) by [art. 3](#)))

### **98 Commencement.**

- (1) This Act (except this section) shall come into operation on such date as the Secretary of State may by order appoint.

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- (2) Different dates may be appointed by order under this section for different purposes of this Act; and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.
- [<sup>F71</sup>(3) An order under this section may make such transitional provisions as appear to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or of any provision of this Act then in force as appear to the Secretary of State necessary or expedient for the purposes or in consequence of the operation of any provision of this Act before the coming into force of any other provision of this Act or of the<sup>M10</sup>Children and Young Persons Act 1969.]

#### Textual Amendments

**F71** S. 98(3) inserted by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 73(4)(c), **Sch. 5 para. 66**

#### Marginal Citations

**M10** 1969 c. 54.

## 99 Short title.

This Act may be cited as the Social Work (Scotland) Act 1968.

**Status:**

Point in time view as at 01/02/2011.

**Changes to legislation:**

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