



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART VII

MISCELLANEOUS AND GENERAL

General

84 **Transfer of assets and liabilities.**

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

85^{F1}

Textual Amendments

F1 S. 85 repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 4 Pt.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

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

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

- (a) in the provision under this Act [^{F2}, or under [^{F3} section [^{F3} 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 ^[F4], 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

^[F5](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, ^[F6]or]

^[F7](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, ^[F8]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 ^[F9]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 ^[F10], community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995, ^[F11]youth rehabilitation order] or probation order or the conditions of a recognizance, or while boarded out under this Act or under ^{F12} . . . the ^{M1}Children and Young Persons (Scotland) Act 1937 by a local authority or education authority ^[F13]or placed with local authority foster parents under the Children Act 1989 ^[F14]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.

^[F15](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.

^{F17}(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 [^{F18}or ^{F19}section 7 (functions of local authorities) or 8 (provision of after-care services) of the [Mental Health \(Scotland\) Act 1984](#)]^{F19}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 \(asp 13\)](#) [^{F20}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 [^{F21}or^{F22}section 7 or 8 of the said Act of 1984]^{F22}section 25, 26 or 27 of the [Mental Health \(Care and](#)

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Treatment) (Scotland) Act 2003 (asp 13)]^{F20} 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.]

^{F23}(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 [^{F24} or]^{F25}section 7 of the said Act of 1984]^{F25}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 [^{F24} or]^{F26}section 7 of the said Act of 1984]^{F26}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 ^{M2}National Assistance Act 1948, and [^{F27}sections 22(2) to (8)] and 26(2) to (4) [^{F28}(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 [^{F29} or any other person or body] for the provision of accommodation under this Act [^{F30} or]^{F31}section 7 of the said Act of 1984]^{F31}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) ^{F32}

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.

F33 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 ^{F35} ^{F36}, 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.
- [^{F37}(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 ^{M3}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 ^{M4}Local Government (Scotland) Act 1966.

Marginal Citations

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

[^{F38}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) [^{F39}sections 25 to 31 of the Mental Health (Care and Treatment) (Scotland) Act 2003]^{M5},

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).

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