



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART II

PROMOTION OF SOCIAL WELFARE BY LOCAL AUTHORITIES

General

12 General social welfare services of local authorities.

- (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 be given to, or in respect of, the persons specified in the next following subsection in kind or in cash, subject to subsections (3) and (4) of this section.
- (2) The persons specified for the purposes of the foregoing subsection are—
 - (a) a person, being a child under the age of eighteen, requiring assistance in kind, or in exceptional circumstances in cash, where such assistance appears to the local authority likely to diminish the need—
 - (i) to receive him into, or to keep him in, care under this Part of this Act, or
 - (ii) of his being referred to a children's hearing under Part III of this Act;
 - (b) a person in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the giving of assistance in another form, or where probable aggravation of the person's need would cause greater expense to the local authority on a later occasion.
- (3) Before giving assistance to, or in respect of, a person in cash under subsection (1) of this section a local authority shall have regard to his eligibility for receiving assistance

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from any other statutory body and, if he is so eligible, to the availability to him of that assistance in his time of need.

- (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.
- [^{F1}(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** 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\(5\)](#)

[^{F2}12A Duty of local authority to assess needs.

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

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

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- ^{F3}(3A) (a) a local authority make an assessment of the needs of any person (“the relevant person”) under subsection (1)(a) above, and
- (b) a person (“the carer”) provides or intends to provide a substantial amount of care on a regular basis for the relevant person,
- the carer may request the local authority, before they make their decision under subsection (1)(b) above, to make an assessment of his ability to provide and to continue to provide care for the relevant person; and if he makes such a request, the local authority shall make such an assessment and shall have regard to the results of that assessment in making that decision.
- (3B) No request may be made under subsection (3A) above by a person who provides or will provide the care in question—
- (a) by virtue of a contract of employment or other contract; or
- (b) as a volunteer for a voluntary organisation.
- (3C) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty of local authority to take into account ability of carers) shall not apply in any case where an assessment is made under subsection (3A) above in respect of a person who provides the care in question for a disabled person.]
- (4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
- (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services Consultation and Representation) Act ^{M1}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.]
- [^{F4}“person” means a natural person.]

Textual Amendments

- F2** 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.](#)

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- F3** S. 12A(3A)-(3C) inserted (1.4.1996) by 1995 c. 12, ss. 2(2), 5(2)
F4 S. 12A(8): definition of “person” inserted (1.4.1996) by 1995 c. 12, ss. 2(3), 5(2)

Modifications etc. (not altering text)

- C1** 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](#)
C2 S. 12A(1) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\), art. 2\(1\)](#)
C3 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](#)
C4 S. 12A(2) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\), art. 2\(1\)](#)

Marginal Citations

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

VALID FROM 01/09/2002

[^{F5}12AA Assessment of ability to provide care

- (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.

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

Textual Amendments

F5 Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); S.S.I. 2002/170, [art. 2](#)

VALID FROM 01/09/2002

12AB Duty of local authority to provide information to carer

- (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

F5 Ss. 12AA, 12AB inserted (1.9.2002) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. [9\(2\)](#); S.S.I. 2002/170, [art. 2](#)

VALID FROM 01/04/1997

[^{F6}12B Direct payments in respect of community care services.

- (1) Where, as respects a person in need—
- (a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and
 - (b) the person is of a description which is specified for the purposes of this subsection by regulations,
- the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.
- (2) If—

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

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

- (3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations.
- (4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.
- (5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—
 - (a) that it has been used to secure the provision of the service to which it relates, or
 - (b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,
 they may require the payment or, as the case may be, the part of the payment to be repaid.
- (6) Regulations under this section shall be made by the Secretary of State and may—
 - (a) make different provision for different cases; and
 - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.]

Textual Amendments

F6 S. 12B inserted (S.)(1.4.1997) by 1996 c. 30, s. 4; S.I. 1997/756, art. 2

Modifications etc. (not altering text)

C5 S. 12B(1) restricted (1.4.1997) by S.I. 1997/693, reg. 4(1)

VALID FROM 01/04/1997

^{F7}12C Further provisions relating to direct payments.

- (1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.
- (2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as

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long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.

- (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

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

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

Where, by virtue of the last foregoing section, 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.

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