



# 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 <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
- (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)

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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.**
- 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)**

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

- C1** 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.
- C2** S. 12 modified (24.6.2015) by [The Community Care \(Provision of Residential Accommodation Outwith Scotland\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/202\)](#), regs. 1(1), [2\(2\)](#)
- C3** S. 12(1) modified (prosp.) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), ss. 5\(1\), 27\(2\)](#)
- C4** S. 12(1) modified (11.5.2015 for specified purposes, 24.6.2015 in so far as not already in force) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\), ss. 5\(1\), 27\(2\)](#); S.S.I. 2015/179, art. 2(1)

**[<sup>F5</sup>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

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

[<sup>F7</sup>(i) if an adult carer provides, or intends to provide, care for that person, of the care provided by that carer,

(ia) if a young carer provides, or intends to provide, care for that person, of the care provided by that carer,]

(ii) in so far as it is reasonable and practicable to do so, <sup>F8</sup>... of the views of the person whose needs are being assessed <sup>F9</sup>... (provided that <sup>F10</sup>... 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.]

[ In subsection (1)(b)(i) and (ia), the reference to the care provided by a carer means—

<sup>F11</sup>(1A) (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,

(b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.

(1B) In—

(a) assessing the needs of a person for services under subsection (1)(a),

(b) deciding under subsection (1)(b) whether those needs call for the provision of any services, and

(c) deciding how any such services are to be provided,

a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.]

(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—

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- (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>F12</sup> .....
- (3B) <sup>F13</sup> .....
- (3C) <sup>F14</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—
- [<sup>F15</sup>“adult carer” and “adult carer support plan” have the meanings given by the Carers (Scotland) Act 2016,]
- [<sup>F16</sup>“community care services” means services, other than services for children, which a local authority is under a duty or has a power to provide, or to secure the provision of, under—
- (a) Part 2 of this Act; or
- (b) any of the following provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003—
- (i) section 25 (care and support services etc. );
- (ii) section 26 (services designed to promote well-being and social development);
- (iii) section 27 (assistance with travel);]
- “disabled person” has the same meaning as in the said Act of 1986; and

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“medical practitioner” means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.]

[<sup>F17</sup> “person” means a natural person.]

[<sup>F18</sup> “young carer” and “young carer statement” have the meanings given by the Carers (Scotland) Act 2016.]

### 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(1)(b)(i)(ia) substituted for s. 12A(1)(b)(i) (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(2\)\(a\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F8** Word in s. 12A(1)(b)(ii) repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(2\)\(b\)\(i\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F9** Words in s. 12A(1)(b)(ii) repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(2\)\(b\)\(ii\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F10** Words in s. 12A(1)(b)(ii) repealed (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(2\)\(b\)\(iii\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F11** S. 12A(1A)(1B) inserted (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(3\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F12** 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](#)
- F13** 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](#)
- F14** 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](#)
- F15** Words in s. 12A(8) inserted (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(4\)\(a\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)
- F16** Words in s. 12A(8) substituted (1.4.2015) by [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(Consequential Modifications and Saving\) Order 2015 \(S.S.I. 2015/157\)](#), [art. 1\(1\)](#), [sch. para. 1\(3\)](#)
- F17** S. 12A(8): definition of “person” inserted (1.4.1996) by [1995 c. 12](#), [ss. 2\(3\)](#), [5\(2\)](#)
- F18** Words in s. 12A(8) inserted (1.4.2018) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), [ss. 30\(4\)\(b\)](#), [45\(2\)](#); [S.S.I. 2017/152](#), [reg. 4](#)

### Modifications etc. (not altering text)

- C5** 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](#)
- C6** S. 12A(1) modified (1.7.2002) by [The Community Care \(Assessment of Needs\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/304\)](#), [art. 2\(1\)](#)
- C7** 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](#)
- C8** 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 \(113:1\)](#).

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## **[<sup>F19</sup>12AZ] Assessments under section 12A: assistance**

- (1) Subsection (4) applies where—
  - (a) a local authority is required by section 12A(1)(a) to carry out an assessment of the needs of a person (the “supported person”) for community care services,
  - (b) it appears to the authority that the supported person falls within subsection (2), and
  - (c) the conditions in subsection (3) are satisfied.
- (2) A supported person falls within this subsection if—
  - (a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment,
  - (b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person to communicate in relation to the carrying out of the assessment.
- (3) The conditions are—
  - (a) there is no guardian, continuing attorney or welfare attorney with powers as respects the provision of assistance in relation to the carrying out of the assessment, and
  - (b) an intervention order has not been granted as respects the provision of assistance in relation to the carrying out of the assessment.
- (4) The authority must take reasonable steps—
  - (a) to identify persons who are able to assist the supported person, and
  - (b) if the supported person agrees, to involve them in assisting the supported person in relation to the carrying out of the assessment or, as the case may be, communicating in relation to the carrying out of the assessment.
- (5) In this section—
 

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

  - (a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and
  - (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's property or financial affairs and having continuing effect despite the granter's incapacity,

“guardian”—

    - (a) means a guardian appointed under the 2000 Act, and
    - (b) includes 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 the adult's incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“welfare attorney”—

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- (a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and
- (b) includes 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**

**F19** S. 12AZA inserted (1.4.2014) by Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), ss. 17, 28(2); S.S.I. 2014/32, art. 3

**F20 12AA Assessment of ability to provide care**

**Textual Amendments**

**F20** S. 12AA repealed (1.4.2018) by Carers (Scotland) Act 2016 (asp 9), s. 45(2), sch. para. 1(2); S.S.I. 2017/152, reg. 4

**F21 12AB Duty of local authority to provide information to carer**

**Textual Amendments**

**F21** S. 12AB repealed (1.4.2018) by Carers (Scotland) Act 2016 (asp 9), s. 45(2), sch. para. 1(2); S.S.I. 2017/152, reg. 4

**F22 12B Direct payments in respect of community care services.**

**Textual Amendments**

**F22** S. 12B repealed (1.4.2014) by Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), ss. 25, 28(2); S.S.I. 2014/32, art. 3 (with art. 5)

**F23 12C Further provisions relating to direct payments.**

**Textual Amendments**

**F23** S. 12C repealed (1.4.2014) by Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), ss. 25, 28(2); S.S.I. 2014/32, art. 3 (with art. 5)

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

Where, by virtue of [<sup>F24</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**

**F24** Words in s. 13 substituted (1.4.1997) by 1996 c. 30, s. 5; S.I. 1997/756, art. 2

### **[<sup>F25</sup>13ZAProvision of services to incapable adults**

- (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
  - (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



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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.]

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**Textual Amendments**

**F25** S. 13ZA inserted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 64, 79(2)

**Status:**

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