

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 3

Adult Support Etc.: Miscellaneous Amendments and Repeals

Section 65 – Adjustments between councils in relation to social services etc.

147. This section clarifies and updates the legislation determining which local authority is financially responsible for providing community care services when a person moves between local authority areas. The Scottish Executive's policy is that normally the local authority in which a person is ordinarily resident is financially responsible for the community care services for that person. Previous legislation did not clearly support this policy and the amendments to section 86 of the Social Work (Scotland) Act 1968 ("the 1968 Act") put the matter beyond doubt. The amendments also update the provisions in recognition of the changes in the range of services available and the methods of provision.
148. [Section 65\(1\)\(a\)](#) extends the provision to cover direct payments and makes a consequential amendment to section 86(1) of the 1968 Act. [Section 65\(1\)\(b\)\(i\)](#) introduces a new provision into section 86(3) of the 1968 Act to disregard from determining a child's ordinary residence any period during which he or she is provided with accommodation under the 1968 Act or under section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003. [Section 64\(1\)\(b\)\(ii\)](#) updates the statutory references to hospitals.
149. [Section 65\(1\)\(c\)](#) inserts new subsections into section 86 of the 1968 Act to extend the provisions for adjustments between local authorities to cover care provided by way of an arrangement between them.
150. New sections 86(4) and (5) of the 1968 Act supplement the provisions of section 86(1) of the 1968 Act which allows local authorities who provide or secure services or accommodation provided under the Acts mentioned in section 86(1) of the 1968 Act to recover the net cost of doing so from the local authority in whose area the person to whom the care is provided is ordinarily resident. New section 86(4) and (5) provide that where one local authority ("the responsible authority") arranges with another local authority or a third party ("the provider") for accommodation to be provided in an area in which the person is not ordinarily resident, so that the responsible authority can fulfil its obligations under the provisions referred to in new section 86(4)(a) to (c), two consequences flow. First, if the provider is a local authority, then any cost incurred by the provider is recoverable from the responsible authority: where the provider is a third party, payment will be governed by the contract between the responsible authority and the third party provider. Secondly, any period during which the person is accommodated under the arrangement is to be disregarded in determining the person's

*These notes relate to the Adult Support and Protection (Scotland)
Act 2007 (asp 10) which received Royal Assent on 21 March 2007*

ordinary residence for the purposes of determining which local authority should fund the net cost of the accommodation.

151. New section 86(6) to (8) also supplement the provisions of section 86(1) of the 1968 Act. They apply when one local authority (“the other authority”) arranges with another local authority (“the providing authority”) that the providing authority will arrange services in the providing authority’s area so that the other authority can fulfil its obligations under the provisions listed in new section 86(6)(a) to (c). The new subsections provide the Scottish Ministers with the power to make regulations specifying when the providing authority may recover from the other authority expenditure incurred in arranging the relevant services where the person for whom the services are providing is not ordinarily resident in the provider authority’s area.
152. New section 86(7) provides the Scottish Ministers with the power to make regulations specifying circumstances which are to be taken into account or disregarded when determining a person’s ordinary residence for the purposes of section 86 of the 1968 Act.
153. New sections 86(8) and (9) supplement the regulation-making powers in amended section 86 of the 1968 Act to provide the flexibility needed to keep up to date with changes in the way services and accommodation are delivered and require any regulations made under new section 86(6) in relation to arrangements dealing with services to be subject to affirmative resolution.
154. New section 86(10) ensures that “local authority” has the same meaning in new section 86(4) to (6) as it does in section 86(1) to (3) of the 1968 Act.
155. [Section 65\(2\)](#) amends section 2 of the Community Care and Health (Scotland) Act 2002 which allows Ministers to determine what is and is not to be regarded as accommodation provided under section 86 of the 1968 Act so that the meaning of “accommodation” in section 86 of the 1968 Act can remain the same as for section 87(2) and (3) of the 1968 Act.