



Adult Support and Protection (Scotland) Act 2007

2007 asp 10

PART 3

ADULT SUPPORT ETC.: MISCELLANEOUS AMENDMENTS AND REPEALS

62 Accommodation charges: removal of liability to maintain spouse and child etc.

- (1) In the National Assistance Act 1948 (c. 29)—
 - (a) sections 42 and 43 are repealed, and
 - (b) in section 65(f)—
 - (i) after “expressed” insert “in sections 22(2) to (8) and 26(2) to (4) of this Act”,
 - (ii) for the word “thereof” substitute “of this Act”.
- (2) In section 87(3) of the Social Work (Scotland) Act 1968 (c. 49), for the words from “(as amended”, where first occurring, to “etc.)” substitute “(as amended by any enactment within the meaning of the Scotland Act 1998 (c. 46)) of the said Act of 1948”.
- (3) In section 4(1)(b) of the Community Care and Health (Scotland) Act 2002 (asp 5), the words from “including” to the end of paragraph (b) are repealed.

63 Direct payments: sub-delegation to councils

In section 12B(6) of the Social Work (Scotland) Act 1968 (c. 49), before paragraph (a) insert—

“(za) make provision for the delegation of functions to local authorities;”.

64 Power to help incapable adults to benefit from social services etc.

After section 13 of Social Work (Scotland) Act 1968 (c. 49) insert—

“13ZA Provision of services to incapable adults

- (1) Where—

Status: This is the original version (as it was originally enacted).

- (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 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.”.

65 Adjustments between councils in relation to social services etc.

(1) Section 86 (adjustments between local authority providing services and local authority of area of ordinary residence) of the Social Work (Scotland) Act 1968 (c. 49) is amended as follows—

- (a) in subsection (1)—
 - (i) for “section”, where first occurring, substitute “subsection”,
 - (ii) after paragraph (b) insert—
 - “(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”,

- (b) in subsection (3)—
 - (i) after “child”, where first occurring, insert “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)”,
 - (ii) for the words from “hospital”, where first occurring, to “1978”, where second occurring, substitute “health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29))”,

- (c) after subsection (3) insert—
 - “(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—
 - (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

Status: This is the original version (as it was originally enacted).

- (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.”.
- (2) In section 2 of the Community Care and Health (Scotland) Act 2002 (asp 5), for “section 87(2)” substitute “sections 86 and 87(2)”.

66 **Application of Social Work (Scotland) Act 1968: persons outwith Scotland**

After section 87 of the Social Work (Scotland) Act 1968 (c. 49) insert—

“87A Power to modify Act for persons placed from outwith Scotland

- (1) The Scottish Ministers may make regulations modifying this Act in such manner as they think fit for the purposes of applying or disapplying any of its provisions in relation to persons placed in Scotland by virtue of arrangements made by—
 - (a) a local authority in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man;
 - (b) any other public body or office-holder exercising functions in relation to any other part of the United Kingdom, or any of the Channel Islands or the Isle of Man, as may be specified in the regulations.
- (2) Such regulations 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.
- (3) Despite section 90(2) of this Act, no statutory instrument containing such regulations may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

67 Public Guardian: interaction with courts

After section 6(2)(d) of the Adults with Incapacity (Scotland) Act 2000 (asp 4), insert—

“(da) to take part as a party in any proceedings before a court or to initiate such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult who is incapable for the purposes of this Act;”.