



Social Work (Scotland) Act 1968

1968 CHAPTER 49

PART VII

MISCELLANEOUS AND GENERAL

General

87 Charges that may be made for services and accommodation.

[^{F1}(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 ^{F2}... [^{F3}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) [^{F4}or [^{F5} section 24(4) of the Carers (Scotland) Act 2016]]] [^{F6}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 ^{F7} ... [^{F8} section 25, 26 or 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) [^{F9} or [^{F10} section 24(4) of the Carers (Scotland) Act 2016]]] [^{F6} 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.]

[^{F11}(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.]

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^{F12}(1C) Despite section 25(3) of the Public Bodies (Joint Working) (Scotland) Act 2014, where a local authority delegates a function in pursuance of an integration scheme under that Act to a person in pursuance of which a service mentioned in subsection (1) is provided by (or under the direction of) that person, subsections (1) to (1B) apply subject to the modifications in subsection (1D).

(1D) The modifications are—

- (a) subsection (1) applies as if—
 - (i) the reference to a local authority providing a service mentioned in that subsection were to a person mentioned in subsection (1C) to whom a function is delegated (or another person under the direction of that person) providing the service, and
 - (ii) the reference to a local authority recovering a charge for a service provided by it were to a local authority recovering a charge for a service that is provided by (or under the direction of) a person mentioned in subsection (1C) to whom a function is delegated, and
- (b) subsection (1A) applies as if the reference to the authority providing the service were to a local authority mentioned in subsection (1C).]

(2) Persons, other than maintainable children, for whom accommodation is provided under this Act [^{F13}or]^{F14}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 [^{F13}or]^{F15}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 ^{M1}National Assistance Act 1948, and [^{F16}sections 22(2) to (8)] and 26(2) to (4) [^{F17}(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 [^{F18}or any other person or body] for the provision of accommodation under this Act [^{F19}or]^{F20}section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)].

^{F21}(4A) Despite section 25(3) of the Public Bodies (Joint Working) (Scotland) Act 2014, where a local authority delegates a function in pursuance of an integration scheme under that Act to a person in pursuance of which accommodation mentioned in subsection (3) is provided by (or under the direction of) that person, subsections (3) and (4) apply subject to the modifications in subsection (4B).

(4B) The modifications are that subsection (4) applies as if—

- (a) after “Secretary of State” there were inserted—
 - “and that section 22 applies as if—
 - (a) in subsection (2), the reference to the authority managing premises in which the accommodation is provided were to a local authority mentioned in subsection (4A) of this section,
 - (b) in subsection (3)—

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- (i) the reference to accommodation provided in premises managed by a local authority were to accommodation provided in premises managed by (or under the direction of) a person mentioned in subsection (4A) of this section to whom a function is delegated, and
 - (ii) the reference to the local authority were to a local authority mentioned in subsection (4A) of this section, and
 - (c) in subsection (5A)—
 - (i) the reference to an authority managing premises in which accommodation is provided were to a local authority mentioned in subsection (4A) of this section, and
 - (ii) the reference to the authority providing accommodation were to a person mentioned in subsection (4A) of this section to whom a function is delegated,
 - (d) in subsection (8), the reference to a local authority providing accommodation were to a local authority mentioned in subsection (4A) of this section,”
- (b) at the end of the subsection there were inserted—
 - “and that section 26 applies as if—
 - (a) in subsection (2)—
 - (i) the reference to the local authority making payments to the organisation with whom the arrangements are made to provide the accommodation were to a person mentioned in subsection (4A) of this section to whom a function is delegated (or another person under the direction of that person) making those payments, and
 - (ii) the reference to the local authority recovering an amount of refund were to a local authority mentioned in subsection (4A) of this section recovering that amount,
 - (b) in subsection (3), the reference to the refund of any payments to the local authority were to the refund of any such payments to the local authority mentioned in subsection (4A) of this section,
 - (c) in subsection (3A)—
 - (i) the reference to the making of arrangements by the local authority were to the making of arrangements by (or under the direction of) a person mentioned in subsection (4A) of this section to whom a function is delegated,
 - (ii) in paragraphs (a) and (c), the references to the local authority were to a person mentioned in subsection (4A) of this section to whom a function is delegated , and
 - (iii) in paragraph (b) the reference to the local authority were to a local authority mentioned in subsection (4A) of this section,” and
 - (d) for subsection (4) there were substituted—
 - “(4) Section 22(5A) of this Act applies for the purposes of subsection (3A) as it applies for the purposes of that section but as if—
 - (a) the reference to an authority managing premises in which accommodation is provided were to a local authority

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- mentioned in section 87(4A) of the Social Work (Scotland) Act 1968, and
- (b) the reference to the authority providing accommodation were to a person mentioned in section 87(4A) of the Social Work (Scotland) Act 1968 to whom a function is delegated.”]
- (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) F22

Textual Amendments

- F1** 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**
- F2** Word in s. 87(1) repealed (S.) (17.2.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 18(a)**, 28(2); S.S.I. 2014/32, art. 2
- F3** 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)
- F4** Words in s. 87(1) inserted (S.) (17.2.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 18(b)**, 28(2); S.S.I. 2014/32, art. 2
- F5** Words in s. 87(1) substituted (31.5.2017) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), **ss. 26(a)**, 45(2); S.S.I. 2017/152, reg. 2, sch. (with reg. 5)
- F6** 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. 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**))
- F7** Word in s. 87(1A)(a) repealed (S.) (17.2.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 18(a)**, 28(2); S.S.I. 2014/32, art. 2
- F8** 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)
- F9** Words in s. 87(1A)(a) inserted (S.) (17.2.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 18(b)**, 28(2); S.S.I. 2014/32, art. 2
- F10** Words in s. 87(1A)(a) substituted (31.5.2017) by [Carers \(Scotland\) Act 2016 \(asp 9\)](#), **ss. 26(b)**, 45(2); S.S.I. 2017/152, reg. 2, sch. (with reg. 5)
- F11** 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**
- F12** S. 87(1C)(1D) inserted (S.) (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(4)(a)**
- F13** 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)**
- F14** 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)
- F15** 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)
- F16** Words substituted by [Social Security Act 1980 \(c. 30, SIF 113:1\)](#), **Sch. 4 para. 5(1)**

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- F17** 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)
- 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\(13\)\(d\)](#)
- F19** 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\(13\)\(c\)](#)
- F20** 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)
- F21** S. 87(4A)(4B) inserted (S.) (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\(4\)\(b\)](#)
- F22** 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

- M1** 1948 c. 29.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29(3)(j) repealed by [2005 asp 3 Sch. 5 para. 1](#)
- s. 61B inserted by [2000 asp 4 s. 36](#) (This amendment not applied to legislation.gov.uk. S. 36 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 62(3)(d) inserted by [2000 asp 4 s. 38\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 38 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 64A(1)(e) and word inserted by [2000 asp 4 Sch. 5 para. 10](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 10 repealed (1.4.2002) without ever being in force by 2001 asp 8, Sch. 4; S.S.I. 2002/162, art. 2 (with arts. 3-13))
- s. 87A inserted by [2007 asp 10 s. 66](#)