

NORTH LANARKSHIRE COUNCIL

REPORT

TO: Social Work Committee	Subject: Scheme of Delegation Notes of Guidance
FROM: Jim Dickie Director of Social Work	
DATE OF COMMITTEE: 2 June 1998	
REPORT AUTHOR: Frank McDade	
REF: FMcD/MMcC	

1. PURPOSE OF REPORT

- 1.1 To advise Committee on, and seek approval for, the implementation of Notes of Guidance relating to sections 12, 27 1 (b) and (c) and 29 of the Social Work (Scotland) Act 1968 and, sections 22 and 29 of the Childrens Act 1995.

2. BACKGROUND

- 2.1 Committee approved a report in March 1998 regarding a scheme of delegation for Social Work functions. The report indicated that interim notes of guidance, adopted at local government reorganisation, would be revised and brought forward.

3. RELEVANT LEGISLATION

3.1 Section 12. Social Work (Scotland) Act 1968

Section 12 of Social Work (Scotland) Act 1968, deals with the general social welfare functions of local authorities. This section of the Act places a "duty" on local authorities to "promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate to their area".

3.2 Section 27 1 (a) and (b) Social Work (Scotland) Act 1968

This section relates to the duty of local authorities to provide a service under criminal justice for supervision, advice, guidance and assistance.

3.3. Section 29 Social Work (Scotland) Act 1968

This section relates to the power of a local authority to defray the expenses of a parent, relative or other person visiting a person, other than a child, who is in care of the local authority. This section also gives the authority to defray expenses for a parent, relative or other person attending the funeral of a person who had been in the care of, or was looked after by, the authority.

3.4 The notes of guidance, appended at APPENDIX 1

Section 22 of the Children (Scotland) Act 1995.

This section relates to the “promotion of welfare of children in need”. The section states that a local authority shall -

Safeguard and promote the welfare of children in their area who are in need: and so far as is consistent with that duty, promote the upbringing of such children and their families, by providing a range and level of services appropriate to the children’s needs.

Section 29 of the Children (Scotland) Act 1995

This section refers to advice and assistance for young persons formally looked after by local authorities.

The section places a duty on local authorities to advise, guide and assist any person in their area over school age but not yet nineteen years of age who at the time when they ceased to be of school age was, but is no longer, looked after by a local authority.

Section 30 of the Children (Scotland) Act 1995

This section deals with power of a local authority to make payments to a young person, who had been looked after by the authority, to assist that person to receive education or training. It also gives powers to the authority to provide contributions towards accommodation and material to a “relevant person.” A relevant person is someone who is over school age and not 21 years of age who had been looked after by the authority.

Notes of guidance are appended at appendix 2

4. FINANCIAL IMPLICATIONS

The budgets for sections 12,27 and 29n of the Social Work Scotland Act and sections 22 and 29 of the Children Act are contained in the social work budget for the financial year 1998/99 and take account of proposals for work children, families and criminal justice.

5. RECOMMENDATIONS

Committee is asked to approve the note for guidances as they relate to:

Sections 12, 27 (a) and (b) and 29 of the Social Work Scotland Act 1968

Section 22, 29 and 30 of the Children Act 1995



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14 May 1998

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APPENDIX 1

North Lanarkshire Council Social Work Department**Guidelines****1. Introduction**

The following Notes of Guidance clarify the circumstances in which the Department can provide assistance in terms of;

- * Sections 12, 27(1)(b) and (c) and 29 of the Social Work (Scotland) Act 1968;
- * Sections 22, 29 and 30 of the Children (Scotland) Act 1995

Social Work Scotland Act 1968**2. Section 12**

2.1 The Social Work (Scotland) Act 1968, Section 12 deals with the general social welfare services of local authorities. The Section is in the following terms:-

- “12 (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, subject to subsections (3) to (5) of this section, be given in kind or in cash subject 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 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 sub-section (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.

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- (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.”
- (6) For the purposes of subsection (2) of this section “person in need” includes a person who is need of care and attention arising out of drug or alcohol dependency or release from prison or other form of detention.

3. Interpretation of Section 12

- 3.1 It will be seen that Section 12 sets out the general duty of local authorities to promote social welfare and this is to be done by making available advice, guidance and assistance.
- 3.2 Assistance in kind or in cash can only be given to, or in respect of “relevant persons” and subject to certain qualifications.
- 3.3 It will be noted that assistance in kind or in cash can be given to, or in respect of, “relevant persons.” The words “to or in respect of” are important since they allow assistance in kind or in cash to be given directly to a relevant person or to someone in respect of a relevant person.
- 3.4 A “person in need” is defined in Section 94 of the 1968 Act and means persons who -
 - (a) are in need of care and attention arising out of infirmity, youth or age; or suffer from illness or mental disorder or are substantially handicapped by any deformity or disability; or
 - (b) being persons prescribed by the Secretary of State who have asked for assistance, are, in the opinion of the Council, persons to whom they may appropriately make available the services and facilities provided by them under 1968 Act.

NOTE 1: Youth is not synonymous with “under eighteen years of age” It does not imply any specific age limit. Need of care and attention based on a person’s comparative youth could arise up to say 25 years of age. Individual circumstances must be examined to establish whether a person’s need of care and attention does arise out of his comparative youth.

NOTE 2: The Secretary of State has not yet prescribed any persons under (b) above.

- 3.5 So far as giving assistance in cash is concerned there is a qualification to be met namely that before giving assistance in cash to or in respect of a “relevant person” the Council must have regard to his eligibility for receiving assistance from any other statutory body (e.g. Department of Social Security) and if he is eligible for assistance regard must be had to the availability to him of that assistance in his time of need. If because of the operation of the rules of a statutory body, e.g. DSS, the amount of cash assistance from the body to the relevant person would be reduced if a Section 12 payment were made, a judgement would have to be made as to whether making the Section 12 payment would achieve the objectives mentioned in 3.4 (a) and (b) above. If the greater part of a Section 12 payment would not go to swell the “relevant person’s” resources it would be very difficult to justify the payment.
- 3.6 When it comes to giving assistance in kind or in cash it should be noted that assistance given in these forms can (as described in Subsection 4 of Section 12) be given unconditionally or subject to conditions as to repayment of the assistance or its value, whether in whole or in part, as the Council considers reasonable always having regard to the means of the person receiving the assistance and to his eligibility for assistance from any other statutory body.

Dealing with a request for assistance in kind or in cash in terms of Section 12

- 3.7 Section 12 places considerable restrictions upon the Council when it comes to giving assistance in kind or in cash and when considering whether to give assistance of this type the following questions in each individual case must be asked and answered in appropriate terms before assistance is given.

- (1) Does the person require assistance?
- (2) Is the required assistance to be given to or in respect of “relevant persons” as described in 3.4 above?

- (3) In the case of a “person in need” as described in 3.5 above will the giving of assistance in either form avoid the Council greater expense in giving assistance in another form or will aggravation of the person’s need cause greater expense to the Council at a later date?
- (4) In the case of a “person in need” are there exceptional circumstances constituting an emergency which justify assistance in cash rather than in kind?
- (5) If cash assistance is required, what is the person’s eligibility for assistance from another statutory body, like DSS and what assistance from that statutory body is available to him?

NOTE: (1) Question 5 does not apply to assistance in kind.

(2) When considering Question 5, refer to paragraph 3.5 above,

- (6) In the case of assistance in kind or in cash, should there be conditions placed on the assistance regarding repayment of all or part of it, or its value, regard being had to the means of the person concerned and to his eligibility for assistance from any other statutory body?

NOTE: If the assistance or its value is to be repaid, in whole or in part, a suitable and enforceable loan document will require to be signed by the person seeking assistance.

4. Use of Section 12 - Implications for Practice

- 4.1 There are clear implications in particular for departmental practice as regards assistance to those who find themselves destitute. Payment to cover fares or the issue of travel warrants to facilitate attendance at DSS offices is not possible except to or in respect of “relevant persons”.

Equally no assistance in kind or in cash can be given outwith DSS hours to persons other than “relevant persons”.

- 4.2 It should be noted that assistance in kind or in cash cannot be justified on grounds of pregnancy alone in terms of Section 12; the person requiring assistance must be a “relevant person”.

Nevertheless it should be borne in mind that if an individual or couple are part of a wider family group where "relevant persons" are present there may be an adverse effect on the relevant persons if material assistance is not provided. Assistance in kind or in cash can be justifiably given in respect of "persons in need" within the family group if the requirements of Section 12 are met.

- 4.3 There are no hard and fast rules for defining what are "exceptional circumstances constituting an emergency" Each case will have to be looked at carefully on its merits.
- 4.4 It will be seen because of these restrictions on cash payments, assistance in kind can be provided more readily. Although tending to go against desirable practice - i.e. avoiding the use of assistance such as food parcels or shopping vouchers and encouraging persons in independent management of financial resources - the terms of Section 12 make it inevitable that, even when material assistance is appropriate, assistance in kind rather than cash would be the normal method, and provides a more accessible means of giving assistance.
- 4.5 In both situations (paragraph 3.4 above) where assistance in kind or cash is feasible, decisions as to whether such help can be given do not depend solely on whether for example the persons are infirm or substantially physically handicapped. In both situations there must be a further preventative element. Thus, no matter what the nature and extent of the present need, an assessment requires to be made as to whether the deployment of assistance in kind or in cash would contribute to preventative goals, i.e. (a) avoiding greater expense in giving assistance in another form, or (b) avoiding greater expense resulting from aggravation of need.

There needs therefore, to be a clear assessment as to whether the use of such assistance can realistically be justified against the actual risk of for example reception into care. Equally, judgement must be exercised as to whether a determination in the circumstances of a "person in need" would result from a failure to provide material assistance, in such a way as to compel the local authority to engage in more extensive and more expensive involvement at a future date. The existence of the need, itself, does not justify assistance in kind or cash.

- 4.6 The implications of this will also affect the use of Section 12 financial resources in a more promotional, preventative sense. Promotional work, involving cash payments, cannot be based only on a general intention of "promoting social welfare".
- 4.7 Nothing in this revised interpretation of criteria for financial and material assistance should be taken to apply to Section 10 payments to voluntary organisations where the chief consideration remains the organisation's sole or primary objective being to promote social welfare.

5. Section 27(1)(b) and (c) Social Work Scotland Act 1968

5.1 Section 27(1)(b) and (c) imposes a duty on local authorities to provide a service for -

- (b) the supervision of, and the provision of advice, guidance and assistance for -
 - (i) persons in their area who are under supervision by order of a court made in the exercise of its criminal jurisdiction by virtue of any enactment and
 - (ii) persons in their area who, following on release from prison or any other form of detention, are required to be under the supervision under any enactment or by the terms of an order of licence of the Secretary of State or of a condition or requirement imposed in pursuance of an enactment, and
 - (iii) without prejudice to sub-paragraphs (i) and (ii) above, persons in the area subject to community service order under section 238 of the Criminal Procedure (Scotland) Act 1995 or a probation order which includes a requirement that the offender shall perform unpaid work: and
 - (iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under section 235 of the said Act of 1995;
 - (v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order made under section 57(2)(d) of the Criminal Procedure (Scotland) Act: and
 - (vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of an offence by that person: and
 - (vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate: and
- 27(1) (c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.

5.2 The service to be provided in terms of Section 27 lists to eight categories of person and care should be taken to establish that persons assisted do come within these categories.

5.3 "Assistance" can include assistance in cash or in kind.

6. Section 29 Social Work Scotland Act 1968

6.1 Section 29 of the 1968 Act deals with “power of local authority to defray expenses of parent, etc., visiting persons or attending funerals” and is in the following terms:-

- s29 (1) A local authority may make payments to any parent, relative or other person connected with -
- (a) a person other than a child, in the care of the authority, or receiving assistance from the authority ; or
 - (b) a child who is being looked after by the authority

in respect of travelling, subsistence or other expenses incurred by the parent, relative or other person in visiting the child, if it appears to the authority that the parent, relative or other person would not otherwise be able to visit him without undue hardship and that circumstances warrant the making of the payments.

- (2) A local authority may make the like payments and in the like circumstances to any parent, relative or other person connected with-
- (a) a person, other than a child, who had been in the care of the authority or receiving assistance from the authority; for
 - (b) a child who had been looked after by the authority, for the purposes of that parent, relative or other person attending the funeral of the person.
- (3) In subsections (1) and (2) above, references to a child looked after by a local authority shall be construed as is mentioned in subsection (3) of section 28 of this Act.

6.2 Section 29 enables the Council to pay the cost of travelling subsistence or other expenses incurred by a parent, relative, or other person connected with someone in care, or receiving assistance provided (1) circumstances warrant, (2) the visitor would not otherwise be able to visit as it would cause undue hardship.

6.3 This section also allows for payment to be made to parents, relatives or other persons to attend the funeral of certain categories of persons who were in care or receiving assistance from the authority

Appendix2

North Lanarkshire Council - Social Work Department

Sections 22, 29 and 30 of the Children (Scotland) Act, 1995

Section 22

- 1.1 This section is similar to section 12 of the Social Work Scotland Act 1968, but specifically refers to the promotion of welfare of children in need.

The Act states that a local authority shall -

- (a) safeguard and promote the welfare of children in their area who are in need; and
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families.

Interpretation of section 22

- 1.2 The interpretation of the operation of this section of the Children Act, for purposes of these guidelines, is similar to those set out under section 12 of the Social Work Scotland Act.
- 1.3 A service may comprise or include giving assistance in kind, or in exceptional circumstances, cash. All sources of actual or potential income should be explored before offering a cash payment
- 1.4 Assistance in cash or kind can be given unconditionally or the Authority can ask for repayment of all or part of the value of the assistance given.
The Authority cannot require a person to make a repayment if that person is in receipt of income support, family credit or a jobseeker's allowance

The maximum payment in any one month to any one family or child is £1000.

Section 29 (1) -

- 2.1 A local authority shall, unless they are satisfied that his or her welfare does not require it, advise, guide and assist any person in their area over school age but not yet nineteen years of age who, at the time when he or she ceased to be of school age, or at any subsequent time was, but who is no longer, looked after by a local authority.

- 2.2 Section 29 (2) -

If a person within the area of a local authority is at least nineteen years of age but is less than twenty-one years of age and is otherwise a person such as is described in sub section (1) above, he may by application to the authority, request that they provide him with advice, guidance and assistance and they may unless they are satisfied that his or her welfare does not require it, grant that application.

2.3 Section 29 (3) -

Assistance given under sub section (1) of (2) may include assistance in kind or in cash.

Section 29 (4) -

Where a person

- (a) over school age ceases to be looked after by a local authority or
- (b) described in sub section (1) above is being provided with advice, guidance or assistance by a local authority

they shall if he or she proposes to reside in the area of another local authority inform that other local authority accordingly, provided that he or she consents to their doing so.

3.0 Interpretation of Section 29

3.1 Children brought up by their parents can usually turn to them for advice, guidance and assistance, even after they reach full adulthood, but this is often not possible for persons who, while they were children, were looked after by local authorities. This section is an important addition to the law and gives power to local authorities to continue to provide advice, guidance and assistance to young persons whom they looked after as children.

3.2 Section 29 (1)

Local authorities are obliged to provide advice, guidance and assistance to any person under the age of nineteen years but over school age, who were but are no longer looked after by the local authority. This obligation is qualified in cases in which the persons welfare does not require such advice, guidance and assistance. It does not apply to children who were but had ceased to be looked after by a local authority before they ceased to be of school age.

3.3 Section 29 (2)

In addition to the obligation as outlined above, local authorities have the power to provide advice, guidance and assistance to persons over the age of nineteen years and under the age of twenty-one years, who are no longer looked after by the local authority. The power can be exercised whenever application has been made to the local authority by the person seeking advice, guidance and assistance. This, however, should only be considered when a careful assessment of the needs of the young person has been made and the authority is satisfied that the young person's needs require it.

4.0 Target Areas for Section 29 Payments

- Direct subsidy to young people in supported accommodation.
- The provision of grants for furniture.
- Social, educational and vocational grants and subsidies.

4.1 Direct Subsidy to young people in Supported Accommodation

The aim of supported lodgings is to provide community based accommodation with support for vulnerable young people who are or have been looked after or looked after and accommodated. The charges for supported lodgings will vary but in most cases this will be paid for from a combination of Housing Benefit, personal contributions from the young person's own income and where required a departmental subsidy. Section 29 payments can be made to make up any possible shortfall.

4.2 The provision of grants for furniture and other supplies

A number of young people who are or have been looked after or looked after and accommodated may be unable to return to live with their parents or carers. The plan may be for them to set up directly in their own tenancies or in a tenancy leased by the local authority.

While benefits or grants may be sought from DSS it is likely that the amount given will not meet all the young person's requirements. It is therefore possible on the basis of an assessment of the young person's needs to make a payment, including the DSS grant and any other sources of income, up to but no more than £2,000 towards the purchase of furniture and household items (see appendix for examples of items to be purchased).

4.3 Subsidies to young people to help with their social, intellectual and vocational interests

While it is to be hoped that young people will have been encouraged to realise their full potential in respect of hobbies and interests while being looked after or looked after and accommodated, it is likely that many young people will require further support and encouragement to maintain and develop these skills and interests.

It is therefore acknowledged that Section 29 monies should be made available to encourage young people to participate in a range of activities which will enhance their self esteem, skills and social development.

Section 30 (1) -

- 5.1 Without prejudice to Section 12 of the Social Work (Scotland) Act, 1968 (general social welfare services of local authorities) a local authority may make
- (a) grants to any relevant person in their area to enable him or her to meet expenses connected with his or her receiving education or training and
 - (b) contributions to the accommodation and material of any such person in any place where he may be
 - (i) employed or seeking employment or
 - (ii) receiving education or training.

5.2 Section 30 (2) -

Subject to sub section (3) below a persons is a relevant person for the purposes of sub section (1) above if

- (a) he is over school age but not yet twenty-one years of age
- (b) at the time when he ceased to be of school age or at any subsequent time he was but he is no longer, looked after by a local authority.

5.3 Section 30 (3) -

A local authority making grants under paragraph (a) or contributions under paragraph (b)(ii) of sub section (1) above to a person, may continue to make them, though he has in the meantime attained the age of twenty-one years until he completes the course of education or training in question, but if after he has attained that age, the course is interrupted by any circumstances they may only so continue if he resumes the course as soon as is practicable.

6.0 Interpretation of Section 30

- 6.1 The local authority has the power to make payments under this section of the Act but is not obliged to do so where a young person was looked after by the local authority before he or she ceased to be of school age.
- 6.2 Monies shall only be granted under this section after a careful assessment of the young person's situation and the authority is satisfied that the young person's needs require it.

7.0 Target Areas for Section 30 Payments

- Direct subsidy of accommodation
- The provision of grants for materials or books or equipment.

The maximum payment in any one month to any one family or child is £1000