

T: 0131-244 3506 F: 0131-244 3502
E: Jan.Raitt@scotland.gsi.gov.uk

Chief Executives, Directors of Social Work,
Directors of Finance and Directors of Housing
of Scottish Local Authorities
Chief Executive of COSLA
President, ADSW
Convener of ADSW Standing Committee on Community Care
Convener of ADSW Resources Standing Committee
Organisations with an interest (see attached list)

October 2008

Dear Colleagues

**RECOVERY OF EXPENDITURE FOR PROVISION OF SOCIAL CARE
CONSULTATION ON REGULATIONS AND REVISED GUIDANCE
ORDINARY RESIDENCE**

The purpose of this letter is to invite your comments on draft regulations and guidance aimed at reducing and resolving disputes between local authorities about financial responsibility for social care clients.

In my letter of 8 May 2006 I set out the responses to the consultation on proposed changes to the Social Work (Scotland) Act 1968 concerning the recovery of expenditure for the provision of social care. The required legislative changes were included in the Adult Support and Protection (Scotland) Act 2007.

A working group was set up to develop regulations and guidance with representatives from both COSLA and ADSW. The group aimed to ensure that as far as possible there was a fair division of responsibilities and that the level of care provided to individuals was not compromised. The working group has now cleared the draft guidance at Annex A and draft regulations at Annex B for wider consultation.

The most significant differences from the guidance contained in SWSG Circular 1/1996 on ordinary residence include:

- Overarching principles - putting the needs of the individual first;
- Improved clarity and equity in recovering the cost of care provided in settings other than care homes eg sheltered and supported accommodation;
- Formal agreements which will improve clarity and reduce the potential for disputes;
- Transitional arrangements to enable home owners who are dependant on care services to move more readily;

- Improved and streamlined arrangements for resolving ordinary residence disputes.

If you wish to comment, please complete Annex C and return it by **Monday 19th January 2009**. General information on Scottish Government consultations is set out at Annex D.

Yours sincerely

Jan Raitt

Full List of Recipients*

Audit Scotland
Bield Housing Association
Camphill Scotland
Capabilty Scotland
Carers Scotland
CrossReach
Citizens Advice Scotland
Equality and Human Rights Commission
The Scottish Housing Regulator
Community Care Providers Scotland
Cornerstone Community Care
Crossroads Scotland
Direct Payments Scotland
ELCAP Ltd
ENABLE
Help the Aged
NHFA
People First Scotland
Quarriers
RNID Scotland
Scottish Care
Scottish Churches Parliamentary Office
Scottish Consortium for Learning
Disabilities
Scottish Council for Voluntary
Organisations
Scottish Council on Deafness
Scottish Federation of Housing
Associations
Scottish Human Services Trust
Scottish Pensioners Forum
Housing Support Enabling Unit
The Abbeyfield Society for Scotland Ltd
The Scottish Community Care Forum
United Kingdom Home Care Association
Values into Action
Faculty of Advocates
Department of Health

***Excludes individuals**

Draft Guidance

SOCIAL WORK (SCOTLAND) ACT 1968 – ORDINARY RESIDENCE DRAFT REVISED GUIDANCE

This circular replaces Social Work Services Group (SWSG) Circular 1/96. It contains guidance¹ only and is not intended to be a definitive interpretation of the law, which is a matter for the Courts. Local authorities are, however, encouraged to follow the guidance to help achieve consistency and equity across Scotland.

1. Purpose

To provide guidance to Scottish local authorities on determining ordinary residence with a view to recovering expenditure under section 86 of the Social Work (Scotland) Act 1968 (“the 1968 Act”) and related regulations in relation to the provision of accommodation, services or facilities to persons not ordinarily resident in their area.

2. Background

There are circumstances in which individuals are provided with accommodation or care services under the 1968 Act and certain other legislation² in a local authority area other than the area in which they are “ordinarily resident”. This can arise simply by virtue of the person being in a particular area at the time of need or it may be as a result of a planned arrangement between local authorities. This guidance is intended to assist local authorities in applying the statutory provisions under which the local authority providing accommodation or services can recover the costs from another local authority.

The guidance also sets out new procedures for resolving disputes when local authorities cannot reach agreement as to which authority is liable for the costs of accommodation or care.

3. Principles

The following overarching principles should be applied in all cases:

- The welfare of the individual is paramount;
- The individual should be able to choose where and how they live whenever reasonably practicable, taking account of the needs assessment;

¹ By virtue of section 5 of the Social Work (Scotland) Act 1968, local authorities shall perform their functions under the general guidance of Scottish Ministers.

² This guidance also relates to accommodation or services provided under certain provisions in the Children (Scotland) Act 1995 and the Mental Health (Care and Treatment) (Scotland) Act 2003. See “Responsibility for funding care” below.

- The individual's needs should be met by the local authority in which the individual is physically present (the local authority of the moment) at the earliest opportunity and disputes about payment should not result in delays in meeting need.

4. Responsibility for Providing Community Care

Under the 1968 Act, Scottish local authorities have a duty to provide community care services within their area. Eligibility for such services arises from physical presence in the local authority area and from the individual being assessed as having a need that calls for the provision of a service. An individual is not excluded from receiving community care services from a Scottish local authority by reason of being ordinarily resident outwith that local authority's area.

5. Responsibility for Funding Community Care – Section 86 of the 1968 Act

It is important to draw a distinction between responsibility for providing care and responsibility for funding it. Although a local authority may be responsible for providing care to someone in its area who is ordinarily resident elsewhere, section 86 of the 1968 Act and related regulations provide for certain expenditure incurred in so doing to be recoverable from the local authority in whose area the individual is ordinarily resident.

Section 86 covers accommodation and services provided under:

- the Social Work (Scotland) Act 1968;
- Part II of the Children (Scotland) Act 1995; and
- Sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Section 86(1) makes general provision for the recovery of certain expenditure.

Section 86(4) to (6)³ of the 1968 Act and the Recovery of Expenditure for the Provision of Social Care Services (Scotland) Regulations 2008 ("the 2008 Regulations") make provision for the recovery of expenditure incurred under arrangements between local authorities.

6. "Ordinarily Resident"?

The question of where an individual is "ordinarily resident" is key to the operation of section 86 and the 2008 Regulations. The local authority area of ordinary residence must be established in order to apply the statutory provisions properly.

There is no definition of the term "ordinarily resident" in the 1968 Act. Where an individual is ordinarily resident is a question of fact and degree. The term "ordinarily resident" has not been the subject of interpretation by the Courts under the 1968 Act. However it has been considered by the Courts in other legislative contexts and is a familiar statutory concept. It is considered that the leading case law, mentioned below, would be of strong persuasive

³ As inserted by section 65 of the Adult Support and Protection (Scotland) Act 2007.

influence to any Court considering the meaning of “ordinarily resident” for the purposes of the 1968 Act.

- **Shah v London Borough of Barnet [1983] 1 All E.R. 226**

In Shah, a House of Lords decision, Lord Scarman stated-

“unless ... it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that “ordinarily resident” refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration”.

- **Levene v Commissioners for Inland Revenue [1928] A.C. 217**

In Levene, again a House of Lords decision, Viscount Cave said that ordinary residence-

“connotes residence in a place with some degree of continuity and apart from accidental or temporary absences.”

In considering whether or not an individual has adopted their place of residence voluntarily, a local authority will need to consider the individual’s capacity to choose where they live.

7. Circumstances in which ordinary residence does not change

In establishing, for the purposes of section 86(1), a person’s ordinary residence, section 86(3) and (5)(b) sets out circumstances that are to be disregarded. For example, time spent in a health service hospital is to be disregarded and, in general, time spent in accommodation **provided** under the 1968 Act should also be disregarded. However, time spent in a residential care setting as a result of a personal arrangement (i.e. residential care not provided or secured by a local authority) is not disregarded and a person’s ordinary residence could change by virtue of residence in such accommodation, depending on the overall circumstances. The 2008 Regulations also contain an ordinary residence disregard in relation to time spent in accommodation with the support of certain services or facilities under an arrangement between local authorities.

8. Recovering Costs - Accommodation provided under arrangements between local authorities

Section 86(5) of the 1968 Act provides that where a local authority (“the responsible authority”) performs the function of providing accommodation through another local authority (“the providing authority”), the costs of provision can be recovered by the providing authority. The time spent in accommodation under such an arrangement is to be disregarded in determining ordinary residence for the purposes of section 86(1), by virtue of section 86(5)(b).

Case Study 1⁴

Mr Example – One (E.1) lives on his own in Glasgow and has a package of care in his own home. His only son lives in South Lanarkshire. Mr E.1 is becoming increasingly frail and a bit forgetful and the neighbours regularly 'phone his son with concerns. Mr E.1's son has a young family and full time job and is finding it increasingly difficult to travel back and forwards to check on his Dad. Mr E.1 is assessed as needing residential care and his son would like him to move into a care home near him. Glasgow then arranges for South Lanarkshire to provide Mr E.1 with a place in a care home. The two councils enter into an arrangement as set out in Annex A which covers the arrangements for; financial assessments; reviews of care needs; and procedures for Glasgow to re-imburse South Lanarkshire.

Where it happens that the responsible authority is not in fact the authority of ordinary residence, then the responsible authority can in turn recover the costs from the authority of ordinary residence, as illustrated in the next example.

Case Study 2

Mrs Example-Two (E.2) lives in Highland. She visits her daughter in Edinburgh and while there falls and breaks her hip. After a spell in hospital in Edinburgh, her mobility remains impaired with little if any potential for improvement. A City of Edinburgh social worker carries out an assessment, and concludes that she is unfit to return home even with a care at home package including equipment and adaptations. Mrs E.2 has a sister and two daughters in Glasgow and would like to go into a care home near them. The family agrees with this. Edinburgh then arranges for Glasgow to provide Mrs E.2 with a place in a care home. Glasgow can then recover the cost of the care not met by Mrs E.2 from Edinburgh who in turn can recover the cost from Highland (the local authority of ordinary residence as ordinary residence has not changed as a consequence of time spent in hospital or in accommodation provided under the 1968 Act.) Administratively it may be more efficient for Glasgow to enter into an appropriate arrangement with Highland. (Perhaps adapting the model agreement at Annex A)

9. Recovering Costs – Care services provided under arrangements between local authorities

Section 86 of the 1968 Act also provides for recovery of expenditure for the provision of certain services or facilities. Section 86 now enables regulations to be made specifying the circumstances in which the costs of providing services or facilities by arrangement between local authorities can be recovered. This change⁵ was in recognition of the fact that the delivery of care has changed since the 1968 Act came into force. As the law stood prior to the recent changes to section 86 and prior to the 2008 Regulations, if a local authority placed an individual into supported housing in another local authority area, this would not have been disregarded for the purposes of establishing ordinary residence, and the cost of any care services could fall to the new local authority. As a consequence, local authorities with specialist units could end up paying for expensive care packages for those placed in the units by neighbouring authorities. Likewise the authority making the placement could offload expensive care packages. The new provisions allow arrangements for services to be made on the basis of fair, appropriate and consistent cost recovery.

⁴ All case studies are fictitious.

⁵ As made by section 65 of the Adult Support and Protection (Scotland) Act 2007.

The 2008 Regulations cover all services or facilities provided to enable a person to live in accommodation with support (as defined in those Regulations). The local authority of ordinary residence at the time the placement is made (regardless of which local authority actually carries out the needs assessment) will be responsible for the costs of the care services and that responsibility should continue even when the needs of the individual change and are re-assessed. It is important that arrangements between local authorities are clearly set down in writing. The standard protocol at Annex B may be used to administer these arrangements.

Case Study 3

Mr Example - Three (E.3) lives in Dumfries and suffers from multiple sclerosis. He requires community care services at home to assist him with his daily living. He is a recovering alcoholic and needs supported accommodation to help with his rehabilitation. There are no appropriate rehabilitation units in Dumfries and the local authority therefore arranges for Mr E.3 to go into a supported housing unit in Glasgow and agree the arrangements (see Annex B). The accommodation is not being provided under the 1968 Act, but is provided under housing legislation and the cost is met through housing benefits. The cost of the community care services provided by Glasgow can be recovered from Dumfries and Galloway as Mr E.3's ordinary residence has not changed as a consequence of the placement. On completion of his rehabilitation, Dumfries would arrange for him to return home to Dumfries. If he chooses to stay in Glasgow, his ordinary residence would change and the costs of care services at home would fall to Glasgow.

10. Recovery of costs not arising under arrangements between local authorities

Paragraphs 8 & 9 above cover the provision of accommodation and services under arrangements between local authorities. There will be cases where accommodation or services are provided to a person not ordinarily resident in a local authority's area, otherwise than by arrangement with another local authority eg where a local authority responds to the urgent needs of a person in their area or where the local authorities concerned fail to agree the terms of an arrangement. In the absence of an arrangement, the costs may still be recoverable from the local authority of ordinary residence under section 86(1). Paragraphs 6 & 7 above contain guidance on establishing ordinary residence.

11. Transitional Arrangements for Voluntary Moves

Where an individual chooses to move between local authority areas of their own accord without the agreement of the relevant local authorities their ordinary residence may change. Such a move will not normally attract the ordinary residence disregards in section 86 or the 2008 Regulations. The local authority in the area to which the person has moved may therefore become responsible for the provision of the care and for the costs.

It can be extremely difficult for people to move without being sure that the care services they need will be in place when they do move. The Scottish Government is aware of a number of cases where individuals have been unable to move as the local authority for the area in which the new home is located will not accept responsibility for providing the care services

until the person is physically present in their area. Nor will the existing local authority help with arranging the care in the new area, for fear of being held responsible for the cost of that care in perpetuity. This can cause considerable distress to the individuals concerned.

The Scottish Government continues to promote choice of accommodation wherever possible. Where a person has shown a definite intention to move between local authority areas on a permanent basis and has sought the assistance of local authorities, those authorities should provide as much help as possible in facilitating the move. Transitional funding may be needed, and the attached protocol at Annex C provides for the cost of the existing care package to be met by the original authority for a period of 6 months (or an alternative period to be agreed by both local authorities) in order to allow the new local authority time to review the care needs and put in place the appropriate services. As the old authority has already budgeted for the cost of the care package, continuing to pay for the care for an additional 6 months should be readily accommodated.

Case Study 4

Mr Example – Four (E.4) is quadriplegic as a result of a serious injury while playing rugby for the army. He lived in Aberdeen with his wife and the council adapted his house and provided a care package to enable him to live at home. His marriage broke down and he decided to return to Edinburgh to be near his family and friends. He secured a tenancy in a specially adapted house with the help of a voluntary organisation. Aberdeen City then contact the City of Edinburgh to set up a protocol in which they agree to pay for Mr E.4's care package for a period of 6 months from the date of Mr E.4's move. Aberdeen City agree to pay the cost of the care package they have assessed Mr E.4 as needing, but at City of Edinburgh prices. Aberdeen City therefore remains responsible for the financial assessment and for calculating Mr E.4's contribution to his care. The City of Edinburgh arranges for the care package to be put in place, based on Aberdeen's assessment, and recovers the cost from Aberdeen.

The City of Edinburgh reviews the care package after 4 months and decides to increase the package with immediate effect. Aberdeen City continues to pay the original agreed amount until the transitional arrangements come to an end and Edinburgh meets the cost of the additional care. At the end of 6 months, the City of Edinburgh takes over responsibility for paying for the full care package and for conducting the financial assessment.

Case Study 5

Miss Example – Five (E.5) requires a wheelchair for mobility and has other care needs. She has lived in South Lanarkshire for the last 20 years to be near her work. Her family live in Argyll and Bute and when she retires she decides to buy a house near them. Before she can move she needs to have a care package in place. South Lanarkshire contacts Argyll and Bute to set up a protocol in which they agree to pay for Miss E.5's care for a period of 6 months from the date of her move. South Lanarkshire agree to pay for the care package they have assessed Miss E.5 as needing but at Argyll and Bute prices and remain responsible for the financial assessment and for calculating Miss E.5's contribution towards the cost of the care.

Argyll and Bute reviews the care package after 3 months, and as Miss E.5 is receiving a lot of support from her family, decide to reduce the care package after duly taking account of the unpaid carer's wishes. Argyll and Bute notify South Lanarkshire of the change in the package and South Lanarkshire pays the reduced amount until the end of the transitional

period, at which stage Argyll and Bute assumes full responsibility for the care package and financial assessment.

12. Free Personal and Nursing Care

Where an individual has been assessed as needing personal or nursing care by a Scottish local authority under section 12A of the 1968 Act, and the care is provided under the 1968 Act, the individual cannot be charged for the care covered by section 1 of the Community Care and Health (Scotland) Act 2002⁶. However, the costs of providing personal and nursing care services to an individual who is ordinarily resident in another local authority area can be recovered from that other authority.

Case Study 6

Mrs Example – Six (E.6) lives in Dundee and Dundee City Council has assessed her as needing residential care. The financial assessment is conducted and Mrs E.6 is to pay for her care over and above her entitlement to free personal and nursing care. She chooses to move to Inverness to be near her sister, and Dundee City Council arranges the care home placement in Inverness – either directly or via Highland Council. Dundee City Council pays for the free personal and nursing care element of the placement, and agrees a protocol with Highland for the review of Mrs E.6's care covering an agreement to pay for the care when Mrs E.6's capital falls below the capital threshold.

Case Study 7

Mrs Example – Seven (E.7) sells her home in Glasgow and moves into a care home in South Ayrshire to be beside the sea. She applies to South Ayrshire for a needs assessment and is assessed as needing residential care. South Ayrshire provides free personal care and as Mrs E.7 is ordinarily resident in their local authority area they cannot recover the cost. Mrs E.7 then decides of her own volition to move to a new luxury purpose built care home back in Glasgow and arranges the move herself. She then applies to Glasgow for a needs assessment and is assessed as needing residential care. Glasgow then provides the free personal care as Mrs E.7's ordinary residence has changed again.

13. Cross Border Placements

This guidance primarily covers **inter Scottish moves**. Section 86 of the 1968 Act, however, extends to England and Wales by virtue of section 97. This means that Scottish local authorities can recover the costs of providing or arranging care or accommodation for someone who is ordinarily resident in a local authority area in England or Wales. It also means that Scottish Ministers can determine ordinary residence disputes between a Scottish local authority and a local authority in England or Wales in relation to the costs of provision by the Scottish local authority under the 1968 Act.

⁶ See also the Community Care (Free Personal and Nursing Care) (Scotland) Regulations 2002 (S.S.I. 2002/303) as amended by S.S.I. 2008/78.

The Scottish Government is working with the administrations in the other parts of the UK on cross border placements and further regulations and guidance will be issued in due course. There are a number of complex issues to resolve and it may be some time before a consistent approach to cross border placements can be achieved. In the meantime Circular SWSG 6/94 on cross border placements is still in force.

14. Disputes about Ordinary Residence

Where disputes arise regarding the ordinary residence of individuals requiring social work services, the local authority where the individual is present should assume responsibility for assessing need and providing care while any dispute about payment is conducted. (Paragraph 4 above refers).

Every effort should be made to resolve any disputes as quickly as possible. If agreement cannot be reached within 3 months of the dispute commencing the authorities should either:

- Submit an agreed statement of facts to Scottish Ministers requesting a determination; or
- Submit separate statements of facts to Scottish Ministers requesting a determination.

The dispute should be treated as having commenced on-

- (a) the date that the local authority that has received a claim for reimbursement under section 86 issues a denial that the individual in question is ordinarily resident in their area; or
- (b) 8 weeks after the claim is issued by the local authority of the moment, whichever is the earlier.

In the interests of transparency, any information submitted by one party will be copied to the other for comment. A time limit for response will be set.

When all substantive comments have been made, Scottish Ministers will make a determination. The Scottish Ministers' decision is final subject only to judicial review.

15. Homeless People

Where a homeless person is in need of urgent social work services, the local authority of the moment should provide these services while any dispute about ordinary residence is conducted. (Paragraphs 3 & 4 above refer). Decisions on where the responsibility for the funding of such services rests, based on ordinary residence, should be decided subsequently. The test of ordinary residence is not the same as that of local connection⁷ used in the homelessness legislation.

⁷ Local connection for these purposes is defined in section 27 of the Housing (Scotland) Act 1987 - further information can be found in the Code of Guidance on Homelessness.

<http://www.scotland.gov.uk/Publications/2005/05/31133334/33366>

16. Young Adults

Section 29 of the Children (Scotland) Act 1995 covers local authorities' powers with regard to young people who were formerly looked after by local authorities. Where such a young person is engaged in education, training, employment or the search for employment in an area section 30 of the 1995 Act provides for any local authority to contribute towards the costs of the young person's accommodation and maintenance in that area.

17. Responsibility for Health Care within the NHS

The framework for establishing responsibility for an individual's care within the NHS is set out in Health Department Letter 2004.15 issued on 31 March 2004:

http://www.sehd.scot.nhs.uk/mels/HDL2004_15.pdf

18. Habitual Residence - Adults with Incapacity (Scotland) Act 2000

Where a local authority is the guardian for an individual and they arrange for that individual to receive care or accommodation in another local authority area, the Adults with Incapacity (Scotland) Act 2000 requires the Chief Social Work Officer for the local authority in whose area the adult is habitually resident to become the adult's guardian. Change of habitual residence is set out in section 76 of the AWI Act and is a separate issue from change of ordinary residence. Local authorities will wish to take this into account when setting up arrangements, clearly defining where responsibility lies for reviewing an individual's care needs etc (Annexes A and B refer).

DRAFT GUIDANCE - ANNEX A

ARRANGEMENTS FOR ACCOMMODATION PROVIDED UNDER SECTION 86(5) OF THE SOCIAL WORK (SCOTLAND) ACT 1968

To include:

- Details of resident concerned including full name, current address, date of birth etc;
- Details of assessment confirming that the individual is in need of residential care – possibly as an attachment;
- Reason for placement in residential care in an area other than the area of ordinary residence;
- Which local authority carries out financial assessment and reviews;
- Agreement to pay for care including any revised care package following review (including clarity about which local authority conducts the review and how often; how the costs of any revised package are agreed; re-imburement for the cost of the actual review etc)

Signed by both authorities – Chief Executive, Director of Social Work, Director of Finance or other?

DRAFT GUIDANCE - ANNEX B

ARRANGEMENTS FOR SERVICES PROVIDED UNDER 86(6) OF THE SOCIAL WORK (SCOTLAND) ACT 1968

To include:

- Details of individual concerned including full name, current address, date of birth etc;
- Details of assessment confirming that the individual is in need or care – possibly as an attachment;
- Reason for move to accommodation in an area other than the area of ordinary residence;
- Which local authority carries out financial assessment and reviews;
- Agreement to pay for care including any revised care package following review (including clarity about which local authority conducts the review and how often; how the costs of any revised package are agreed; re-imburement for the cost of the actual review etc)

Signed by both authorities – Chief Executive, Director of Social Work, Director of Finance or other?

DRAFT GUIDANCE - ANNEX C

PROTOCOL FOR TRANSITIONAL FUNDING FOR SERVICES - VOLUNTARY MOVES

To include:

- Details of individual concerned including full name, current address, proposed new address date of birth etc;
- Details of care assessment and current care package – possibly as an attachment;
- Agreement to pay for care package for a period of 6 months from the date of the move or such other period as may be appropriate. The amount paid will cover the cost of the provision of the care in the new area.
- Where a re-assessment is carried out by the new local authority before the transitional period elapses, and this results in an increased care package, the old local authority will continue to pay the original amount agreed.
- Where a re-assessment is carried out by the new local authority before the transitional period elapses, and this results in a decreased care package, the old authority will pay the reduced amount until the expiry of the transitional period.

Signed by both authorities – Chief Executive, Director of Social Work, Director of Finance or other?

Draft Regulations

SCOTTISH STATUTORY INSTRUMENTS

2009 No.

SOCIAL CARE

The Recovery of Expenditure for the Provision of Social Care Services
(Scotland) Regulations 2009

<i>Made</i> - - - -	2009
<i>Laid before the Scottish Parliament</i>	2009
<i>Coming into force</i> - -	2009

The Scottish Ministers make these Regulations in exercise of the powers conferred by section 86(6) and (7) of the Social Work (Scotland) Act 1968⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and extent

1.- (1) These Regulations may be cited as the Recovery of Expenditure for the Provision of Social Care Services (Scotland) Regulations 2009 and come into force on XXXXXX.

(2) These Regulations extend to Scotland only.

Interpretation

2.- (1) In these Regulations-

“accommodation with support” means accommodation that is supported, under arrangements, by services or facilities that are provided under-

- (a) the Act;
- (b) Part II of the Children (Scotland) Act 1995 (promotion of children’s welfare by local authorities etc.); or
- (c) sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (local authority provision of services),

to enable a person to live in that accommodation but does not include accommodation provided under any of those enactments;

“arrangements” means arrangements of the type described in section 86(6);

“the other authority” has the meaning assigned by section 86(6) but restricted to local authorities in Scotland;

“the providing authority” has the meaning assigned by section 86(6) but restricted to local authorities in Scotland; and

“the Act” means the Social Work (Scotland) Act 1968.

(2) Any reference in these Regulations to a section is a reference to a section of the Act unless otherwise stated.

⁽¹⁾ 1968 c. 49. Section 86(6) and (7) was inserted by section 65(1) of the Adult Support and Protection Act 2007 (asp 10).

Circumstances specified under section 86(6)

3. Expenditure incurred by the providing authority under arrangements for the provision of services or facilities to enable a person to live in accommodation with support is recoverable from the other authority.

Period to be disregarded for the purposes of section 86(1)

4. In determining, for the purposes of section 86(1), the ordinary residence of any person, any period in which that person is residing, under arrangements, in accommodation with support shall be disregarded.

A member of the Scottish Executive

St Andrew's House,
Edinburgh

[] 2009

**RECOVERY OF EXPENDITURE FOR PROVISION OF SOCIAL CARE
CONSULTATION QUESTIONS**

1. Draft Regulations

Are the draft regulations and related guidance (paragraph 9 of the draft guidance refers) clear and will they work in practice to help address the issues you currently face?

If not how could they be improved and can you provide examples of disputes that arise that would not be covered by the new regulations.¹

2. Draft Guidance

Is the guidance clear and will it help to address the issues you currently face?

If not how could it be improved and can you provide examples of disputes that arise that would not be covered by the new guidance.

¹ **NB** The regulation and guidance apply to inter Scottish moves only. Work on cross border arrangements is ongoing.

3. Disputes about Ordinary Residence

Would the revised procedures set out at paragraph 14 of the guidance be helpful?

If not, can you suggest alternative procedures?

4. Annexes A and B – Arrangements for Accommodation and Services

The drafts suggests the information that could be included in these arrangements:

- **is anything missing?**
- **is anything included that would not be needed?**
- **would it be helpful to develop these into agreement templates and would your local authority use them?**

5. Annex C – Protocol for Transitional Funding for Services – Voluntary Moves

Would the proposed protocol work in practice?

- is anything missing?
- is anything included that would not be needed?
- would it be helpful to develop this into an protocol template and would your local authority use it?

6. Any Other Comments (please say which section of the guidance or regulations your comments apply to where appropriate)

7. Respondent Information

Name

Address

If you are responding as an Individual – please complete the following

a. Do you agree to your response being made available to the public (in the Scottish Government library and on the Scottish Government website).

YES or NO

b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please circle ONE option):

- response with name and address
- response and name only
- response only

If you are responding as a group or organisation

Do you agree to your response being made available to the public (in the Scottish Government library and on the Scottish Government website). If you agree the name and address of your organisation will be made available to the public.

YES or NO

PLEASE RETURN YOUR COMMENTS BY MONDAY 19TH JANUARY 2009

By email to:

George.Whitton@scotland.gsi.gov.uk

Or by post to:

**George Whitton
Community Care Division
Scottish Government
Area 2 ER
St Andrew's House
Regent Road
Edinburgh
EH1 3DG**

If you have any enquiries please phone George on 0131 244 5403

GENERAL NOTES ON CONSULTATIONS

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations ([SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx](http://www.scotland.gov.uk/consultations/seconsult.aspx)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

**Primary and Community Care Directorate| Community Care Division
October 2008**