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# Social Services and Well-being (Wales) Act 2014

Part 11 Code of Practice (Miscellaneous and General)



# Part 11

Code of Practice on the exercise of social services functions in relation to part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act 2014.

*Includes adults and children in prison, youth detention accommodation, approved premises and bail accommodation, and ordinary residence.*

*Issued under section 145 of the Social Services and Well-being (Wales) Act 2014.*

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## Chapter / Contents

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<b>Preamble</b>	<b>3</b>
1. Adults with care and support needs in prison, approved premises and bail accommodation and children with care and support needs in youth detention accommodation, prison, approved premises or bail accommodation; and	4
2. Ordinary residence and disputes about ordinary residence and portability of care and support.	25
<b>Annex 1</b>	<b>38</b>
<b>Annex 2</b>	<b>41</b>

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## Preamble

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This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the 2014 Act).

The Social Services and Well-Being (Wales) Bill received Royal Assent on 1 May 2014. The 2014 Act comes into effect on 06 April 2016.

The Social Services and Well-being (Wales) Act 2014 is available at:

<http://www.legislation.gov.uk/anaw/2014/4/enacted>

Local authorities, when exercising their social services functions, **must** act in accordance with the **requirements** contained in this code. Section 147 (departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities **must** have regard to any **guidelines** set out here.

In this code a **requirement** is expressed as **must** or **must not**. **Guidelines** are expressed as **may** or **should / should not**.

Part 11 of the 2014 Act – miscellaneous and general, contains a range of provisions, including the ability of the Welsh Ministers to make regulations which are ancillary to the operation of the 2014 Act. Sections 194 and 195 allow regulations to be made about ordinary residence and disputes about ordinary residence. Sections 185 to 188 make provision in relation to **adults** in prison, youth detention accommodation, approved premises and bail accommodation and **children** in youth detention accommodation, prison and bail accommodation.

The term child is used throughout this code to mean children and young people under 18 years.

Welsh Government has sought to support implementation through a process that fully engages stakeholders. Central to this approach has been the establishment of technical groups. Additionally, in the case of sections 185-188 a steering group, made up of representatives with the relevant expertise, technical knowledge and practical experience was established to support the development of this code of practice and associated detailed practice guidance.

## Advocacy

An individual must feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views wishes and feelings. This support can be provided by someone's friends, family or wider support network.

The dedicated code of practice on advocacy under Part 10 of the 2014 Act sets out the functions when a local authority, in partnership with the individual, must reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority must arrange an independent professional advocate. Professionals and individuals must ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.

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## 1. Adults with care and support needs in prison, approved premises and bail accommodation and children with care and support needs in youth detention accommodation, prison, approved premises or bail accommodation

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### Introduction: aim and scope

This chapter of the code of practice sets out the duties under the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) on local authorities in relation to care and support for:

- **Adults** in prisons, approved premises or bail accommodation in **Wales** (including those aged over 18 in youth detention accommodation), and
- **Children** in youth detention accommodation, prison or bail accommodation in **England and Wales**.

This chapter covers:

- Interpretation and definitions
- Duties of local authorities
- for adults with care and support needs who are detained in the secure estate
- for children with care and support needs who are detained in the secure estate
- Transition to adulthood while in the secure estate
- Welsh adults in the secure estate in England
- Portability and cross border arrangements
- Exclusions for both children and adults under the 2014 Act
- Working in partnership
- Meeting care and support needs
- Safeguarding
- Aspects of care
- Information sharing
- Charging
- Complaints
- Inspectorates and investigations
- Transition arrangements post 2016

This code of practice sets out the responsibilities of local authorities in Wales in respect of adults and children detained in the secure estate who have care and support needs.

### Interpretation and definitions

Section 188 contains the interpretation provisions for sections 185 -187 of the 2014 Act. These provisions and other definitions that provide greater clarity for this chapter are explained below:

**Prison** has the same meaning as in section 53(1) of the Prison Act 1952 – <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52/contents>

The prison where an individual is detained is a matter for the Ministry of Justice.

**Approved premises** has the same meaning as the accommodation specified in section 13 of the Offender Management Act 2007. It is supervised hostel-type accommodation for the supervision and rehabilitation of offenders.

<http://www.legislation.gov.uk/ukpga/2007/21/contents>

**Bail in criminal proceedings** has the same meaning as in section 1 of the Bail Act 1976 <http://www.legislation.gov.uk/ukpga/1976/63/contents>. Bail accommodation<sup>1</sup> is for people who would normally be living in the community on bail or Home Detention Curfew but do not otherwise have a suitable address - or they need some extra support during the period of their bail or Home Detention Curfew licence. The people eligible for this service are not those who **should** be in prison. They have been bailed by the courts or released from prison, initially on an electronic tag, having served a prison sentence. The overall aim of the service is to reduce unnecessary loss of liberty and its negative impacts on family life, employment and housing, and to deter people from re-offending.

**Youth detention accommodation** means:

- a secure children's home;
- a secure training centre;
- a young offender institution;
- detention in accommodation provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children's Act 1989 for the purpose of restricting the liberty of children; and
- accommodation or accommodation specified by order under section 107(1)(e) of the powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for the purposes of detention and training orders) <http://www.legislation.gov.uk/ukpga/2000/6/contents>.

**National Offender Management Service (NOMS)** is an executive agency of the Ministry of Justice, its role is to commission and provide offender services in the community and in custody in England and Wales, ensuring best value for money from public resources. NOMS works to protect the public and reduce reoffending by delivering the punishment and orders of the courts by supporting rehabilitation by helping offenders change their lives.

**National Probation Service (NPS) and Community Rehabilitation Companies (CRCs)** are implementing the Transforming Rehabilitation reforms, putting in place a new system for offender management and rehabilitation across England and Wales. The NPS is responsible for conducting all initial offenders' assessments for risk of harm, and allocating offenders to either NPS or CRCs. It will manage all offenders who pose a high risk of serious harm to the public; the CRCs are responsible for managing the majority of offenders in the community (mostly low to medium risk offenders). There is one CRC for Wales.

**Youth Offending Teams** are multidisciplinary teams comprising health, social services, education, police and probation working together and are statutory local partnerships established by section 39 of the Crime and Disorder Act 1998<sup>2</sup>.

<sup>1</sup> <http://www.stonham-bass.org.uk/>

<sup>2</sup> The precise requirements of the Act are that youth offending teams shall include at least one of each of the following: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; (c) a police officer; (d) a person nominated by a Local Health Board, any part of whose area lies within the local authority's area; (e) a person nominated by the chief education officer appointed by the local authority

**The Southwark Judgement**<sup>3</sup>, made by the Law Lords in May 2009, sets a precedent in case law that obliges children's services to provide accommodation and support to homeless 16-17 year-olds. This will continue to provide the catalyst for housing and social services departments to work more collaboratively to deliver both the duties under the Housing (Wales) Act 2014 and Social Services and Well-being (Wales) Act 2014.

**HMI Prisons** means Her Majesty's Inspectorate of Prisons for England and Wales. HMI prisons is an independent inspectorate covering England and Wales which reports on conditions for, and the treatment of, those offenders in prison, young offender institutions and immigration detention facilities.

**HMI Probation** means Her Majesty's Inspectorate of Probation for England and Wales. HMI Probation is an independent inspectorate which reports on the effectiveness of work with adults, children and young people who have offended aimed at reducing re-offending and protecting the public.

**The Prisons and Probation Ombudsman (PPO)** investigates complaints from individuals within the secure estate including young offender institutes, those on probation and those held in immigration removal centres. The Prisons and Probation Ombudsman also investigates all deaths that occur among prisoners, immigration detainees and the residents of approved premises, and from April 2015 they investigate deaths in secure children's homes in England.

**Annex 1** provides details of other relevant guidance, codes of practice and additional information.

## Duties of local authorities

The 2014 Act sets out the duties placed on local authorities in respect of adults with care and support needs who are in the secure estate in Wales. This duty exists regardless of their place of ordinary residence in Wales or elsewhere before their detention, and a change in how existing responsibilities for the care and support of children in the secure estate (whether detained in England or Wales) are fulfilled.

Individuals, adults and children, in the secure estate are to be treated in the same way as those in the community unless Part 11 disapplies rights or duties. Sections 185 -187 therefore modify the application of specified provisions within the rest of the 2014 Act in relation to specified classes of individuals detained within the secure estate.

Local authorities have a range of duties to fulfil in respect of assessing and meeting the care and support needs of those in the secure estate, and need to take a holistic approach when individuals are serving their sentence and when planning for their release.

The responsibility for the care and support needs of an adult in the secure estate in Wales, regardless of their place of ordinary residence in Wales or elsewhere before their detention, falls on the local authority where the provision is located.

<sup>3</sup> <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/appg-1.htm>

The responsibility for the care and support needs of a Welsh child falls on their Welsh home local authority, that is, the local authority in whose area the child was ordinarily resident prior to being in custody.

If the child has no known ordinary residency status, then responsibility for their care and support needs will fall on the local authority where the child is detained, whether that be in England or Wales.

Local authorities **must** engage with partner organisations to identify how existing resources can be best used. Local authorities may commission or arrange for others to provide care and support services, or delegate the performance of the function to another party but the responsibility for fulfilling the duty will remain that of the local authority.

The structure of this code of practice follows that of the 2014 Act in looking at provisions/exclusions for adults in the secure estate, provisions/exclusions for children in the secure estate and additional exclusions that apply to both adults and children in the secure estate.

## Adults

Section 185 covers adults, who are aged 18 and over in the secure estate in Wales. Local authorities **must** meet the care and support duties under the 2014 Act for those adults in the secure estate in Wales, regardless of their place of ordinary residence in Wales or elsewhere before their detention, where the prison or other secure estate premises are within their boundary.

Local authorities **must** support an adult with care and support needs in the secure estate in Wales just as they would for someone in the community.

The local authority **must** design its care and support procedures to be able to meet the care and support needs of those within the secure estate. The delivery of care and support arrangements operating in the community setting may need to be adjusted to meet the needs of the population and the regime of the secure estate.

The local authority **must** meet its responsibilities for adult care leavers in the secure estate, at the appropriate time. The local authority's responsibilities to care leavers (Chapter 5 Leaving care, Part 6) are suspended where the local authority has no ability to fulfil these responsibilities during the time the child is detained but are triggered again when the individual is released.

Section 185(5) excludes some of the support for care leavers aged 18 years and over that they would otherwise have been entitled to receive while they are detained in the secure estate. Adult care leavers aged 18 years and over (category 3); care leavers who reconnect at 21 with education and training (category 4), young people who left care under a Special Guardianship Order (category 5), and other former looked after children who may be entitled to advice and support (category 6) are not entitled to receive some of the support which they would otherwise be entitled to receive in accordance with Part 6 of the 2014 Act<sup>4</sup> during the time they are detained in the secure estate. Entitlements within sections 110, 112, 114 and 115 of the 2014 Act are disapplied during the period of detention.

<sup>4</sup> See sections 110 support for category 3 young people, 112 support for category 4 young people, 114 support for category 5 young people and 115 support for category 6 young people of the 2014 Act.

Section 185(6) excludes an adult protection and support order (Section 127) in relation to adults from applying to adults who are detained in the secure estate. A local authority cannot obtain such an order and cannot enter the secure estate to exercise its power under this arrangement.

Part 6 on looked after and accommodated children **should** be read in conjunction with this code of practice. Duties under sections 105 – 108 of the 2014 Act continue to apply during the period that the young adult is detained<sup>5</sup>.

## Children

Section 186 covers children in the secure estate. The Welsh home local authority **must** meet the care and support duties for children in the secure estate whether they are detained in England or Wales, just as they would if they were living in the community.

Table 1 below sets out the responsibilities of local authorities in respect of the care and support needs of children in the secure estate, taking into account any previous involvement of social services, the ordinary residency of the child and where they are detained.

**Table 1 – Responsibilities of local authorities in respect of the care and support of children in the secure estate**

Ordinary residency of child	Status of child	Detention location	Local authority's responsibility
A migrant child or a child with no ordinary residency status		Detained in Wales	It is the responsibility of the Welsh local authority, where the child is detained, to meet their care and support needs
Child is an ordinary resident of a Welsh local authority	Regardless of whether the child had any previous involvement with social services	Detained in Wales	It is the responsibility of the child's Welsh home local authority, to meet their care and support needs
Child is ordinary resident of a Welsh local authority	If the child was S20 or S31 under the Children Act 1989 prior to being detained	Detained in England	It is the responsibility of the child's Welsh home local authority, to meet their care and support needs
Child is ordinary resident of an English local authority	If the child was S20 or S31 under the Children Act 1989 prior to being detained	Detained in Wales	Is the responsibility the English home local authority to meet the care and support needs of the child (see paragraph A below).
Child is ordinary resident of an	If the child was either not known to	Detained in Wales	The Welsh local authority

<sup>5</sup> See section 105 – keeping in touch; section 106 – personal advisers; section 107 – pathway assessments and plans: general, and section 108 – pathway assessments and plans: post-18 living arrangements.

Ordinary residency of child	Status of child	Detention location	Local authority's responsibility
English local authority	social services, or had been assessed as being a child in need under S17 of the Children Act 1989, prior to being detained		where the child is detained is responsible for the care and support needs of that child,
Child is ordinary resident of a Welsh local authority	If the child has either had no prior involvement with social services, or had been assessed as being a child in need under S17 of the Children Act 1989, prior to being detained	Detained in England	For this group of children there is dual responsibility on the Welsh home local authority of the child (under the Social Services and Wellbeing Act 2014) and the English local authority where the child is detained (under the Children Act 1989) (see paragraph B below)

Paragraph A - The Children Act 1989, and the regulations made under it, notably the Care, Planning, Placement and Review of Cases (England) Regulations 2010 and the Visits to Former Looked After Children in Detention (England) Regulations 2010 are the basis upon which the English home local authority retains responsibility for these children. In addition, section 186(6) of the 2014 Act disapplies sections 21, 37 and 38 from having any application in relation to former section 20 children detained in Wales whose responsible local authority is in England.

Paragraph B– Both the Welsh home local authority and the English local authority share responsibility where the child is detained. Both have responsibility for a Welsh child who is in detention in England but where there has been no prior involvement of social services, or that the child has been assessed as a child in need under S17 of the Children Act 1989. Both the Welsh and English local authorities in question will need to agree between them who takes the primary responsibility and how this is taken forward on a case by case basis. This agreement will need to be set out in a Memorandum of Understanding between the two local authorities.

The Welsh home local authority **must** design its procedures and services to be able to meet the care and support needs of those children within the secure estate. The delivery of care and support arrangements may need to be adjusted to meet the needs of the population and the regime of the secure estate.

The Welsh home local authority **must** fulfil their duties towards a looked after child during their period of detention in accordance with the requirements of Care Planning, Placement and Review of Cases (Wales) Regulations 2015 and to former looked after children on their release

Local authorities **must** continue to fulfil its duties in relation to sections 105 – 108 of the 2014 Act (keeping in touch, personal advisers, pathway assessment and plans, pathway assessments and plans post 18 living arrangements) and these continue to apply to category 2 and to relevant category 5 and 6 young people during the period that they are detained.

Section 186(4) excludes the duty of a local authority to accommodate and/or maintain a looked after child (duties set out in sections 79, 80, 81 and 82); it excludes the need for a local authority to support, accommodate and /or maintain category 2 young people; and it excludes the need for a local authority to support category 5 and 6 young people who are under the age of 18 (see sections 109, 114, 115 and paragraph 1 of schedule 1) in terms of their education and training as none of these duties can be fulfilled by the local authority while the individual is detained in the secure estate.

Local authorities' responsibilities to category 2 young people under sections 109, 114 and 115 of the 2014 Act are triggered again when the child is released.

This code of practice **should** be read in conjunction with Part 6 of the 2014 Act on looked after and accommodated children. Section 97 of the 2014 Act extends the duties currently in place under the Children Act 1989, section 23ZA to visit former looked after children to ensure that a local authority **must** visit all children detained in the secure estate, subject to the disapplication of certain maintenance provisions set out in section 186(4).

Part 6 also sets out a local authority's duties to promote and maintain contact between looked after children and their family. Section 95 places a duty on the local authority to promote and maintain contact between a looked after child and their family. However the local authority has discretion as to whether it provides financial support incurred by visits (section 96).

## Transition to adulthood while in the secure estate

When a child in the secure estate reaches 18 they are legally regarded as an adult. The local authority, where the prison is located to which that young adult is transferred, **must** take responsibility for their care and support needs.

In the majority of circumstances there is no continuing obligation upon the Welsh home local authority after the child reaches the age of 18, unless that same local authority would be responsible as a result of the adult institution to which the young adult is being transferred is within their area.

Nevertheless, the Welsh home local authority **must** meet its duties in relation to sections 105 – 108 of the 2014 Act (keeping in touch, personal advisers, pathway assessment and plans, pathway assessments and plans post 18 living arrangements) where these apply to care leavers during the period that they are detained

In practice these arrangements need to be reviewed on a case by case basis. Where it is believed to be in the child's best interests to have the existing arrangements remain in place, after they reach 18, this may be co-ordinated between the relevant parties.

## Welsh adults in the secure estate in England

Some adult offenders from Wales will serve either part, or all, of their sentence in prisons in England. Female offenders from Wales will serve their entire sentence in England as there are no female prisons in Wales. Individuals from Wales may also be placed in bail accommodation or approved premises in England.

The Care Act 2014 places duties on English local authorities to provide care and support for adults in the secure estate within their geographical area. Those Welsh adults in the secure estate in England with care and support needs will have those needs met by the English local authority in whose area they are based.

## Portability and cross border arrangements

When an adult in the secure estate moves across a local authority boundary (either within Wales or across the English/ Welsh border), as a result of an inter-prison transfer whilst in custody or on resettlement after release, it is important to maintain continuity of care and support.

Following the notification by the secure estate of a transfer or impending release the local authority responsible for the care and support of the individual while they were detained (the sending authority) will be responsible for contacting the local authority to which the individual will relocate (the receiving authority) as soon as possible. Both authorities will need to work together, and share appropriate information, to ensure continuity of care and support is maintained, until the receiving authority undertakes a re-assessment of the individual's needs for care and support,

These arrangements are supported by the *principles of cross border continuity of care within the United Kingdom* as set out in the code of practice for Part 4 of the Act - Annex 2, and responsibilities of the prison service in such circumstances will be clarified in an amendment to PSI 15/2015 Adult Social Care.

In the case of the child/ young person if the local authority responsible for their care and support needs changes the arrangements above **should** apply.

## Exclusions for both children and adults under the 2014 Act

The majority of the provisions under the 2014 Act apply to those in the secure estate just as they would to individuals living in the community. Section 185 sets out the provisions/ exclusion for adults in the secure estate, section 186 sets out provisions/ exclusions for children in the secure estate and section 187 sets out provisions which are disapplied for both children and adults. These are explained below.

## Carers

Section 187(1) states that a person (child/adult) cannot be a carer if they are detained in prison, approved premises or youth detention accommodation or after having been convicted of an offence is residing in approved premises.

This means that an individual cannot be given the formal status of a carer under the 2014 Act even if they are assisting another individual. Arrangements for offenders to assist other offenders, such as by collecting meals, are permitted.

A Prison Service Instruction has been issued to cover prisoners assisting other prisoners. Prison Service Instruction 17/2015<sup>6</sup> Prisoners Assisting Other Prisoners applies in England but the approach set out also applies in Wales. It describes the principles that apply to all formal arrangements for prisoners to provide assistance, including meeting certain needs for care and support, to other prisoners.

### Direct payments

Section 187(2) states that a person (child/adult) cannot receive direct payments towards meeting the cost of their care and support needs if they have been convicted of an offence and are in prison, or in youth detention accommodation, or residing in approved premises. Any individual in custody who is eligible for care and support to meet their needs would receive that care and support by way of direct provision from the local authority.

### Preference for accommodation

Section 187(3) states that a person (child/adult) cannot express preference for accommodation while they are detained in prison, youth detention or residing in approved premises.

Individuals are able to express a preference for accommodation when they are making plans for their accommodation on release, subject to risk assessment and public protection issues and victim considerations. Probation services may need to agree the area that the individual will reside in to coincide supervision requirement and/ or risk assessments. Section 52 (6) of the Housing (Wales) Act 2014<sup>7</sup> requires local authorities to develop homelessness strategies and to refer to actions it is taking, or those of its partner organisations, for those who may be in particular need of support if they are or may become homeless, including those people leaving prison or youth detention accommodation.

### Protection of property

Section 187(4) states that the local authority's duty to protect a person's property (child/adult) does not apply when they are in prison, youth detention or residing in approved premises.

Those on remand living in bail accommodation or under Home Detention Curfew (child/adult) would still be able to be a carer, to receive direct payments where applicable, be able to express a preference for their accommodation (as part of the court requirement), and to have their property protected in the same way as any other individual within the authority area.

### Working in Partnership

Local authorities will need to work in partnership with a range of stakeholders to deliver their duties within the 2014 Act to ensure an integrated approach to meeting care and support needs. Criminal justice agencies will be key partners in these arrangements.

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<sup>6</sup> <http://www.justice.gov.uk/offenders/psis> - see 17/2015

<sup>7</sup> <http://www.legislation.gov.uk/anaw/2014/7/section/52/enacted>

Local authorities **must** work in partnership across their departments such as social services, housing, and education to ensure a consistent and consolidated response is offered by the local authority.

Local authorities **must** work in partnership with their external partners:

- NOMS
- Youth Offending Teams
- Local Health Boards /NHS Trusts; and
- Third and independent sector

Local authorities **must** play their part in multi agency arrangements which have been developed to protect both the public and individuals and victims.

### Multi Agency Public Protection Arrangements

Multi Agency Public Protection Arrangements (MAPPA) in England and Wales are the way in which responsible authorities manage registered sex offenders, violent and other types of sexual offenders and offenders who pose a serious risk of harm to the public. MAPPA include the NPS in Wales, HM Prison Service and police forces in Wales. Local authorities have a duty to co-operate and may need to respond to MAPPA timescales and requirements (six months prior to release) when planning for an offender's release.

### Multi Agency Risk Assessment Conference

Domestic Abuse Multi Agency Risk Assessment Conference (MARAC) is the way in which agencies co-operate to protect victims of domestic abuse. Local authorities are key partners in these arrangements and domestic abuse cases will often have stringent conditions applied which may need to be reflected in a care and support plan, particularly in relation to accommodation and placement post release.

Local authorities **should** make links with the Police and Crime Commissioners, and other statutory and non-statutory partners including local criminal justice boards, multi-agency Integrated Offender Management Cymru regional groups, those delivering offender substance misuse services, as well as the child's reintegration and resettlement panels across Wales.

### Memorandum of Understanding

Local authorities with a secure establishment within their boundaries **must** establish a Memorandum of Understanding (MOU) between themselves, NOMS /Youth Justice Board and the secure estate facility with which they are working. The MOU will document how the care and support arrangements are delivered within the secure estate facility.

Establishments within the secure estate have very specific processes and procedures and local authorities **must** ensure that such arrangements are robust and offer a proportionate response to the care and support needs presented. This will include abiding by all rules and practices for secure establishments, including (but not limited to) security policies such as staff vetting, searches on entry / exit for restricted items, and equality procedures.

## Security vetting

Staff employed by local authorities working with adults in the secure estate that require regular, frequent and unsupervised access to individuals **must** fulfil the security checks and other clearance requirements set out by NOMS. Details of the vetting procedure **must** be set out in the MOU.

Local authorities **must** notify the secure estate facility they are working with the names and details of the individual staff that will require access to the secure estate environment. The secure estate facility will complete the vetting procedures on behalf of the local authority and notify them once clearance has been received.

Vetting can take several months so local authorities are advised to plan ahead when filling staff vacancies. Local authorities **must** work with individual secure estate establishments to ensure that sufficient time is taken to vet, train and familiarise staff with the environment within which they will work.

Local authorities **must** consider how care and support will be delivered to those in the secure estate and ensure that the vetting of care and support provider staff is given equal priority to that of its own staff.

Local authorities **should** engage with their partners, particularly their Local Health Board, to learn lessons on how to engage and retain practitioners that are best suited to working within a secure environment.

## Meeting Care and Support Needs

The local authority's responsibilities in meeting the care and support needs of those in the secure estate and how local authorities **must** design and deliver this are detailed below.

## Population Assessment

The regulations under Part 9 of the 2014 Act place a duty on local authorities to establish regional partnership boards. The regional partnership boards **must** ensure that local authorities, health boards and key partners work effectively together to respond to the population assessment carried out in section 14 of the 2014 Act.

Local authorities **must** include populations from the secure estate in their population assessment report and take into account any future plans for the secure estate in Wales. In doing so they will wish to consult with NOMS Youth Justice Board.

Further guidance is available in the Code of Practice, under Part 2 of the 2014 Act.

## Preventative services

Section 15 of the 2014 Act sets out how local authorities **must** provide or arrange services that prevent or delay the development of people's needs for care and support.

Local authorities **must** consider, in partnership with others, how they will deliver preventative services needed by those in the secure estate.

The secure estate already has a significant range of services that can be drawn on by local authorities to deliver the early intervention and prevention arrangements. This does not preclude a local authority from identifying additional preventative services which could be developed and operated from within the secure estate.

Local authorities **must** consider how best to deliver those services to adults who are under the responsibility of probation services in the community, taking account of the Wales Reducing Re-offending Strategy<sup>8</sup>

Local authorities **must** consider how best to deliver those services to children taking account of the Welsh Government/Youth Justice Board joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice system<sup>9</sup>.

Further guidance is available in the Code of Practice, under Part 2 of the 2014 Act.

### Information, Advice and Assistance

The information, advice and assistance service will signpost both children and adults in the secure estate to appropriate services to meet their care and support needs. This approach will mirror the way in which those living in the community are supported by the information, advice and assistance service. Local authorities **must** consider with partners how this service can most appropriately be accessed by those in the secure estate.

Local authorities **must** ensure that the information, advice and assistance offered is accessible for all individuals who need it and the profile of each of the secure settings will be important in deciding how to deliver information, advice and assistance to those in the secure estate. This includes the need to provide access to this service through the Welsh language where this is the wish of the individual.

NOMS can support local authorities in designing and enabling the delivery of the information, advice and assistance service to those in the adult secure estate. Youth Justice Board and those managing secure settings for children can support local authorities in designing and enabling the delivery of the information, advice and assistance service. Local authorities **must** engage with those managing the secure settings to ensure that the information, advice and assistance service provided is effective and appropriate.

The virtual campus intranet system, which supports learning and skills development in the secure estate, may be a potential resource capable of supporting the information, advice and assistance service within the secure estate. Local authorities **should** consider this development with NOMS and its other key partners.

The use of secure email for those in the secure estate might also offer opportunities to deliver the information, advice and assistance service to individuals, and for families and friends of those in the secure estate, to pass on information and advice obtained on their behalf.

<sup>8</sup>[http://www.google.co.uk/url?url=http://walescrc.co.uk/uploads/WALES\\_CRC\\_INTERVENTIONS\\_EDITION\\_3\\_-\\_FINAL\\_LOW\\_RES\\_NEW.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=ODxbVb7mD6vV7QaLp4HgCg&ved=0CBkQFjAA&usq=AFQjCNHzImFseXY8Kj\\_93lMmpoVqeD3-ig](http://www.google.co.uk/url?url=http://walescrc.co.uk/uploads/WALES_CRC_INTERVENTIONS_EDITION_3_-_FINAL_LOW_RES_NEW.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=ODxbVb7mD6vV7QaLp4HgCg&ved=0CBkQFjAA&usq=AFQjCNHzImFseXY8Kj_93lMmpoVqeD3-ig)

<sup>9</sup>[https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/374572/Youth\\_Justice\\_Strategy\\_English.PDF&rct=j&frm=1&q=&esrc=s&sa=U&ei=LztbVbioKsylv7AbdlYPoBQ&ved=0CBoQFjAB&usq=AFQjCNE8Ujv/mKEMY5LV0xNIv59KvoRM3XA](https://www.google.co.uk/url?url=https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374572/Youth_Justice_Strategy_English.PDF&rct=j&frm=1&q=&esrc=s&sa=U&ei=LztbVbioKsylv7AbdlYPoBQ&ved=0CBoQFjAB&usq=AFQjCNE8Ujv/mKEMY5LV0xNIv59KvoRM3XA)

The prison service provides an induction course for all those entering the secure estate. The information, advice and assistance service can be a module within the course to help individuals to understand how the care and support system works, how it can help them, or their families, to meet their care and support needs.

Further guidance is available in the Code of Practice, under Part 2 of the 2014 Act.

Section 60(6) of the Housing (Wales) Act 2014 provides opportunities for a local authority to provide a local authority wide, holistic package of information, advice and assistance to those in the secure estate covering care and support needs as well as housing advice and support to prevent homelessness.

## Advocacy

Advocacy services play a vital role in supporting individuals to consider their care and support needs. On occasions, because of their particular needs, people may need additional support to ensure that they understand what is available to them and how to access this support. In such cases advocacy **must** be made available to ensure that people are actively engaged in expressing their views and feelings, and able to participate in the process in making decisions that affect them, and in determining how best to meet the personal well-being outcomes that they wish to achieve.

Advocacy **must** be provided for those in the secure estate in the same way as for those living in the community. Advocacy can be provided by family, friends or someone's wider support network. There will be occasions where this primary advocacy source is unavailable/ cannot gain ready access and in these instances, local authorities **must** ensure that an independent advocate is provided, at no cost to the individual, in order that they can be fully engaged and able to participate in the process.

Further guidance is available in the Code of Practice Complaints, Representations and Advocacy Services, under Part 10 of the 2014 Act.

## Assessment

Those in the secure estate with care and support needs have a right to an assessment with the aim of meeting their personal well-being outcomes. Local authorities **must** undertake assessments of those in the secure estate just as they would for anyone living in their area but may need to adapt the delivery of the assessment arrangements to suit the restrictions of the secure estate regime.

The ability for those with care and support needs to be able to access appropriate assessment arrangements on entering custody is important, but the fluctuating needs of individuals can mean that they may require an assessment or review at other times during a sentence or where transferring between establishments.

The local authority **must** ensure that once notified that an individual within the secure estate is believed to have care and support needs, that it provides an appropriate and proportionate assessment. The basic custody screening tool<sup>10</sup> and the health needs assessment for adults or the initial assessment and the reception interview for children are initial ways in which an individual's care and support needs may be identified once an individual enters the secure estate and local authorities are likely to receive an initial referral as a result of these processes.

If a local authority has established that an individual has been receiving care and support before entering the secure estate through the above processes, they will need to re-assess how the care and support needs of that individual can best be met now that they are in the secure estate.

Local authorities **should** consider the needs of the wider family for any individual when an assessment is undertaken.

A family member can raise concerns over the care and support needs of an individual within the secure estate, and request an assessment for that individual. Where it appears to that local authority that the individual may have needs for care and support they have a duty to undertake an assessment of those care and support needs.

In a reciprocal manner, those in the secure estate can raise concerns over the care and support needs of another family member, wherever they are living in Wales. Where it appears to a local authority that the individual in question may have needs for care and support they have a duty to undertake an assessment of those care and support needs. Local authorities **must** ensure that there are referral arrangements between practitioners, to ensure that information, and the outcome of any relevant assessments that will impact on other family members, are shared and acted upon.

A local authority may combine a care and support assessment with another assessment, or may carry out the assessment jointly with another assessment. Local authorities **must** recognise the need to involve other agencies such the Team around the Family, Integrated Family Support Service, and schools when undertaking such assessments and have regard to any special educational needs the individual may have.

The national assessment and eligibility tool, developed for use across all local authorities in Wales, **must** be used for those in the secure estate. The national tool will ensure consistency when individuals with care and support needs are transferred to another local authority's care, either because of an inter-prison transfer or because of release.

If an adult or a child aged 16-17 refuses an assessment, the local authority's duty to carry out the assessment does not apply. However, a local authority **must** be aware of the need to carry out an assessment in certain circumstances notwithstanding a refusal.

Local authorities **must** ensure, where appropriate, that consent is given if an individual's assessment is shared with other providers involved with the individuals' support and management. If consent is not given the local authorities **should** try to impress on the individual the value of doing so and explain how sharing will improve inter-agency working for the individual's benefit.

Further guidance is available in the Code of Practice on Assessment, under Part 3 of the 2014 Act and the Code of Practice on Meeting Needs, under Part 4 of the 2014 Act.

## Eligibility

The model of eligibility under the 2014 Act confers the eligibility status on the individual need not on the person. For those in the secure estate the eligibility of the individual's needs are the same as for those in the community. The individual's care and support needs are deemed eligible if the needs can only be met through the delivery of a care and support plan managed by the local authority.

If the individual's care and support needs are deemed eligible the local authority **must** work in partnership with the individual, and their partner organisations, to develop the care and support plan.

## Care Planning

When any of an individual's needs are deemed to be eligible, the local authority must provide a care and support plan for that individual, to detail how their care and support needs can be best met.

Care and support plans for those in the secure estate will be subject to the same review process as all other plans and **should** be reviewed each time an individual enters custody from the community or is released to the community.

The decision to end a care and support plan / close a case can only be made through the process of a case review. This will ensure that local authorities can only close a case after an evaluation of the extent to which the outcomes have been achieved; and confirmation that the individual has appropriate information, advice and assistance and/or access to preventative services to meet their needs.

This approach will ensure integration of care and support arrangements with other care and treatment arrangements. The local authority **must** explore opportunities to involve other partner organisations (subject to consent with the individual) with the person's care and support plan, including NOMS staff, and health care staff.

Where there are overlapping duties to prepare plans that are nationally or legally prescribed for example a Care and Treatment Plan prescribed under the Mental Health (Wales) Measure 2010 or a section 31A care plan prepared for the purposes of Part 4 of the Children Act 1989, or a detention plan under the Care Planning, Placement and Case Review (Wales) Regulations 2015, and there is a plan that meets the requirements of a care and support plan; the preparation, delivery and review of that plan can be regarded as the way in which the local authority can meet its duties in respect of care and support.

Where there are well-being or specialist plans which do not meet the requirements of a care and support plan the local authority **must** ensure that practitioners have regard to the care planning regulations and the appropriate code of practice but **must** still combine the care arrangements into a single integrated care and support plan. This will include plans relating to the safeguarding of the individual.

Further guidance is available in the Code of Practice on Meeting Needs, under Part 4 of the 2014 Act.

## Equipment or adaptations

For those assessed as being in need of equipment or adaptations to their living accommodation to meet their care and support needs, local authorities **must** discuss with their partners in the secure estate and health care services where responsibility lies. Where this relates to fixtures and fittings for example, hand rail or ramp this will be for the secure estate to deliver. Some suggested adaptations may not be possible in the secure environment. In these situations local authorities **should** liaise with custodial managers and ensure that the individual's care and support needs continue to be met.

Local authorities are to provide specialised and moveable items such as hoists or walking aids, where these are deemed appropriate.

Further guidance is available in the Code of Practice on Meeting Needs, under Part 4 of the 2014 Act.

## Safeguarding

### Safeguarding Boards and the Secure Estate

The objectives of safeguarding adults boards under the 2014 Act are to protect adults who have needs for care and support and are experiencing or at risk of abuse or neglect, and to prevent such adults from becoming at risk of abuse or neglect. Safeguarding children boards have similar objectives to protect children who are experiencing, or at risk of, abuse, neglect or other kinds of harm and to prevent such children from becoming at risk to such abuse, neglect or other kinds of harm.

Both National Probation Service and the Community Rehabilitation Company for Wales are statutory partners on both safeguarding adults boards and safeguarding children boards by virtue of section 134(2)(e) and (f) respectively of the 2014 Act. The remaining statutory partners are the police, the NHS Trust, the Local Health Board and the local authority.

Prison governors are not a specified safeguarding board partner and therefore not required to be a member of the board. Boards are a forum for the exchange of advice and expertise and inviting a prison governor to participate in safeguarding board arrangements where there is a prison in the boundary of the board is likely to be helpful to both board members and governors to ensure that those in the secure estate are safeguarded effectively.

Prison Service Instruction 16/2015<sup>11</sup> Adult Safeguarding In Prisons effective in England and Wales, sets out that, safeguarding boards with prisons in their area are encouraged to invite prison governors to become members of the board and governors are encouraged to be proactive in engaging with the safeguarding board and to become a member (or to send a representative).

Safeguarding boards may take a strategic interest in the safeguarding work of the prison, and / or provide advice and assistance on how prisoners with care and support needs for whom there are safeguarding concerns are managed.

<sup>11</sup> <http://www.justice.gov.uk/offenders/psis>

Boards, for example, may wish to be involved where an individual is about to be released and there is the potential for learning from the arrangements that have been put in place in the secure estate by those responsible for ensuring their safety in the community. Boards, as part of their participation arrangements, may wish to offer opportunities for prisoners with care and support needs to contribute to their work, for example by running prisoner consultation groups. Governors are encouraged to share relevant information and to facilitate access to prisoners as appropriate.

## Safeguarding adults

Safeguarding Adults Boards are responsible for protecting adults within their areas who have needs for care and support and are experiencing or at risk of abuse or neglect, and for protecting adults from becoming at risk of abuse or neglect.

In parallel to this duty, NOMS has issued a Prison Service Instruction 16/2016<sup>12</sup> effective in England and Wales, which specifies the processes that prison governors **must** put in place to ensure that prisoners receive a level of protection that is equivalent to that provided to adults in the community, particularly those who may have needs for care and support and who are unable to protect themselves from abuse, neglect or the risk of it.

The Prison Service Instruction 16/2015 Adult Safeguarding in Prisons effective in England and Wales specifies that prison governors:

- **must** appoint a functional head with lead responsibility for adult safeguarding issues;
- must have systems in place to protect adult prisoners from abuse and neglect;
- **must** have systems in place for staff, prisoners and others to report suspected incidences of abuse or neglect and make them aware of their responsibility to do so;
- **must** have systems in place to record and respond to reports of suspected instances of abuse or neglect, including protecting complainants / reporters from victimisation;
- **must** ensure that data is collected on all recorded suspected instances of abuse or neglect and that analysis of this data informs actions to improve relevant practice and procedures; and
- are encouraged to engage with safeguarding boards - recognising boards as fora for the exchange of advice and expertise; a source of advice and assistance, likely to be helpful to governors in ensuring prisoners are safeguarded effectively.

Safeguarding boards and prison governors will want to establish mechanisms to clearly set out how their shared duties and responsibilities to safeguard adults will be exercised in a coherent and lawful manner.

Local authorities will specifically want to establish mechanisms with prison governors to clearly set out the arrangements by which the local authority will exercise its duty under section 126 of the 2014 Act as a result of receiving a report under section 128 or otherwise that an adult is at risk. The section 126 duty requires that a local authority, if it has reasonable cause to suspect that an adult in its area is an adult at risk as defined by section 126(1) **must**:

<sup>12</sup> <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2015/psi-16-2015-adult-aafeguarding-in-prisons.pdf>

- enquire, or cause enquiries to be made, to enable the local authority to decide whether any action should be taken (under the 2014 Act or otherwise) and, if so, what and by whom; and
- decide whether any such action should be taken.

Such arrangements will need to reflect the necessity for these duties to be exercised subject to the necessary modifications caused by adult detention in the secure estate and the overlapping duties of the prison governor under the relevant statutory Prison Service Instructions.

Prison Service Instructions 15/2014<sup>13</sup> and 05/2014<sup>14</sup> effective in England and Wales, set out the service requirements for Investigations and learning following incidents of serious self-harm or serious assaults and safeguarding of children and vulnerable adults.

Detailed guidance on the roles of safeguarding boards is set out in the statutory guidance issued under Part 7 of the 2014 Act.

## Safeguarding children

Safeguarding children boards are responsible for protecting children within their areas who are experiencing or at risk of abuse, neglect or other kinds of harm, and for protecting children from becoming at risk of abuse, neglect or other kinds of harm.

In November 2002, the High Court ruled that duties placed on local authorities by the Children Act 1989 to provide an appropriate range of services for children in need – also applied to children detained in the secure estate (also known as the Munby judgment). The High Court also ruled that human rights legislation, particularly the Human Rights Act 1998, applied to children in custodial facilities.

Local authorities in Wales are required to ensure that their representative visits any child who is normally resident in their area but who has been detained in the secure estate (whether they are detained in England or in Wales). The purpose of the visit is to speak with the child in private and to provide a written report indicating whether the child's well-being is being adequately safeguarded; the frequency of future visits; arrangements to promote contact with the child's family and an assessment of how the child's wellbeing will be safeguarded following their release.

In Wales, children are accommodated in either Hillside Secure Children's Home or Parc Young Offender Institution. Hillside Secure Children's Home is managed by the local authority and is registered and inspected by the Care and Social Services Inspectorate Wales. Day to day responsibility for safeguarding arrangements in the secure children's home is the responsibility of the registered manager under the oversight of the local authority.

Safeguarding boards and the secure children's home **must** establish mechanisms to clearly set out how their shared duties and responsibilities to safeguard children in a secure children's home will be exercised in a coherent and lawful manner and reflect the necessity for these duties to be exercised subject to the necessary modifications as a result of a child's detention in the secure estate.

<sup>13</sup> <http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

<sup>14</sup> <http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

Parc Young Offender Institution operates under a contract managed by the Ministry of Justice and subject to Prison Service Instruction 08/2012 Care and Management of Young People. Prison Service Instruction 08/2012 requires each establishment in the under 18 secure estate to produce, publish and agree with the local safeguarding children board, a safeguarding children policy statement and for the statement to be reviewed annually in consultation with the local safeguarding children board. A template is provided to assist.

Prison Service Instruction 08/2012<sup>15</sup> effective in England and Wales, is scheduled to expire on 31 March 2016 and will be reviewed and re-issued in Wales to reflect the statutory changes introduced through the 2014 Act. Key changes include that governors of young offender institutions will no longer be a specified safeguarding board partner and that local safeguarding children boards will be replaced by safeguarding children boards from April 2016. Safeguarding boards and governors **must** at a minimum, maintain these existing requirements pending the outcome of the scheduled review of the Prison Service Instruction.

## Aspects of Care

### End of Life Care

The provision of end of life care will extend to those who reach their end of life whilst in the secure estate. Some individuals will transfer to a hospital, hospice, care home or to an alternative prison for palliative care which provide a more suitable environment. Approved premises are not in general a suitable location for the provision of end of life care.

In these circumstances the responsibility for care and treatment will pass to the NHS but a local authority **must** meet the individual's care and support needs if the individual falls within the criteria established for temporary absence from the secure estate. If the individual is released on compassionate grounds then the care and support arrangements would move with the individual as with any other release arrangements.

Local authorities **should** work with the prison staff and the healthcare provider to ensure that the care and support needs of the individual are met to further support their end of life care.

### Continuing NHS Healthcare

Continuing NHS Healthcare is a package of ongoing care that is arranged and funded solely by the health service for individuals outside a hospital setting who have qualifying ongoing health needs. Local Health Boards in Wales are responsible for providing continuing healthcare to those in the secure estate as they would for those living in the community. Local authorities **must** work with the Local Health Boards to ensure that the care and support needs of those in receipt of continuing healthcare are met.

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<sup>15</sup> <http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>

## Information Sharing

Local authorities **must** ensure the information held on children and adults is kept secure. Local authorities **must** develop agreements consistent with policies and procedures of the Ministry of Justice and NOMS and the Youth Justice Board.

This code endorses the Caldicott 2<sup>16</sup> recommendations that

.... there should be a presumption in favour of sharing for an individual's direct care and that the exceptions should be thoroughly explained, not vice versa. The motto for better care services should be: to care appropriately, you **must** share appropriately.

Local authorities **must** work with NOMS / Youth Offending Teams to provide information that may be requested in order to complete pre-sentence reports required by the courts. Local authorities **must** provide the information as soon as practicable after receiving the request.

Local authorities **must** work with its partners to ensure that personally identifiable information is shared within the principles of the Wales Accord on Sharing Personally Identifiable Information (WASPI)<sup>17</sup>. All Local Health Boards, NHS Trusts, and local authorities in Wales are signatories to this protocol and these arrangements are compliant under the Data Protection Act 1998.

Local authorities **must** ensure that their staff are supported and trained appropriately in both information sharing and compliance with the Data Protection Act 1998. Staff accessing or using the data **must** be trained in good data handling and be aware of security issues. Individuals and families **must** be informed of this sharing at the start of the assessment and care and support planning process.

## Charging

Where provisions within the 2014 Act are not dis-applied or modified these will apply in the same way to those in the secure estate as to any other person in the community.

For example, charging for care and support for those detained will be the same as any other citizen where a Welsh local authority is responsible for that individual's care and support. So while the financial circumstances of those detained may be different to the general population due to where they are, they **should** still be financially assessed for charging in the same way as everybody else.

Under the 2014 Act a child cannot have a charge imposed on them. Charges which relate to a child's care and support may be imposed on a parent of the child (but only if the parent is over the age of 18 years). Welsh home local authorities with responsibility for children in the secure estate **must** comply with these arrangements.

Further guidance on this is available in the Code of Practice on Financial Assessment and Charging, under Parts 4 and 5 of the 2014 Act.

<sup>16</sup> Caldicott 2 - <http://www.wales.nhs.uk/sites3/page.cfm?orgid=950&pid=68298>

<sup>17</sup> Wales Accord on the Sharing of Personal Information <http://www.waspi.org/>

Local authorities **must** provide information to those in custodial settings on how to make a complaint and seek redress about provision of care and support services. Local authorities **must** be informed by the managers of custodial settings where a prisoner wishes to make a complaint as soon as they are made aware.

Further guidance is available in the Code of Practice on Complaints, Representations and Advocacy Services, under Part 10 of the 2014 Act.

### Inspectorates and investigations

The Prison and Probation Ombudsman conducts investigations in adult and young people's facilities following complaints about prison services, as well as deaths in custody and other significant events. The Prison and Probation Ombudsman will commission the relevant body to assist their investigations where it is considered that an aspect of care and support has contributed to the event. Local authorities **should** co-operate with and attend any inquests that are held following a death in custody, where they are requested to do so or they have relevant information. Local authorities **should** co-operate with any investigation as required.

Prisons and probation services are inspected by HMI Prison and HMI Probation. In Wales the Care & Social Services Inspectorate Wales, Estyn and Health Inspectorate Wales co-operate with HMI Prisons and Probation to contribute to these inspections. Local authorities **should** make any relevant assessments and other documents available to inspecting bodies as part of any such inspection.

Local authorities will receive copies of inspection reports that are relevant to them. It will be good practice for local authorities to contribute to the responses and action plans in conjunction with NOMS, health care providers and commissioners.

### Transition Arrangements post 2016

The 2014 Act comes into effect in April 2016 and local authorities will be planning to operate the new arrangements from the changeover date. Implementation plans developed by local authorities will need to take full account of their duties to those in the secure estate and ensure that they are able to respond appropriately and in a managed way from April 2016.

## 2. Ordinary residence and disputes about ordinary residence and portability of care and support

### Introduction

#### Aim and scope

This chapter deals with:

- determining ordinary residence in relation to assessment and meeting eligible care and support needs
- determining ordinary residence when an adult moves into certain types of accommodation out of area
- disputes between authorities about a person's ordinary residence and portability of care and support, and the process for seeking a determination by the Welsh Ministers or appointed person.

The principles governing placements of adults in other parts of the UK (cross-border placements), and the procedures for resolving disputes that may arise in relation to them, are similar to those for out-of-county placements within Wales. Guidance on cross-border placements is attached to this code of practice at Annex 2.

### Context and purpose

#### Ordinary residence

Ordinary residence is a key concept in determining which local authority has a duty to assess and meet the care and/ or support needs of an individual under Parts 3, 4 and 6 of the 2014 Act. Regulations made under Part 11 of the 2014 Act contain additional provisions on ordinary residence, relating to specified accommodation and dispute resolution.

Section 19 requires that where an adult may have needs for care and support the local authority **must** assess whether the adult does have such needs, and if so, what those needs are. This duty applies to any adult who is ordinarily resident in the authority's area and to any other adult who is within the authority's area.

Section 21 makes similar requirements in respect of children.

Section 24 requires that where a carer may have needs for support the local authority **must** assess whether the carer does have such needs (or is likely to do so in the future), and if so, what those needs are (or are likely to be). This duty applies to any carer who is providing or is likely to provide care for an adult or disabled child who is ordinarily resident in the authority's area, or for any other adult who is within the authority's area.

Where the care and support needs of an adult meet the eligibility criteria (or the local authority considers it necessary to meet those needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect), section 35 requires local authorities to meet those needs where the adult is ordinarily resident in the local authority's area or is of no settled residence and within the authority's area.

Where the support needs of an adult carer meet the eligibility criteria, section 40 requires local authorities to meet those needs where the person cared for by the carer is an adult who is ordinarily resident in the local authority's area, or is of no settled residence within the authority's area, or if the cared for person is a disabled child within the local authority's area. Section 42 makes similar provision in relation to meeting the support needs of a child carer.

Ordinary residence is not a condition of the duty to meet the care and support needs of a child. Section 37 requires only that the child is within the local authority's area and that their needs meet the eligibility criteria or the local authority considers it necessary to meet their needs in order to protect the child from abuse, neglect or other harm (or the risk of abuse, neglect or other harm).

Under section 76 of the 2014 Act (accommodation for children without parents or who are lost or abandoned etc.) a local authority is responsible for providing accommodation for any child within its area who meets the criteria in section 76(1). However, where a local authority provides accommodation under this section for a child who was (immediately before it began to look after the child) ordinarily resident within the area of another local authority, it may recover from that other local authority any reasonable expenses incurred by it in providing the accommodation and maintaining the child (see section 193 of the 2014 Act).

Section 194(6) provides that in determining the ordinary residence of a child for the purposes of the 2014 Act, the child's residence in the following places is to be disregarded:

- a school or other institution
- a place in which the child is placed in accordance with the requirements of a supervision order under the Children Act 1989 or in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008
- accommodation provided by or on behalf of a local authority in Wales (or a local authority in England).

This means that where a local authority is providing accommodation for a child under section 76 and is seeking to recover the costs of providing that accommodation from the local authority in whose area the child was ordinarily resident immediately before it began to look after the child, the question of where the child was ordinarily resident is to be determined without regard to their actual place of residence at that time, if this is one of the places listed in section 194(6).

Where a looked after child is the subject of a care order, the local authority responsible for providing accommodation for the child will be the authority which is designated by the court at the time the care order was made. The designated local authority is the authority within whose area the child is ordinarily resident or, where the child does not reside in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the order is being made (see section 31(8) of the Children Act 1989).

Section 105(6) of the Children Act 1989 will apply where there is any question of where a child was ordinarily resident for the purpose of deciding which authority is the designated local authority under section 31(8). Section 105(6) of the 1989 Act makes similar provision to that contained in section 194(6) of the 2014 Act, such that the child's residence in specific places is disregarded when determining the child's ordinary residence for this purpose.

Section 194(1) deals with where an adult is to be treated as ordinarily resident, if the local authority which is responsible for meeting their needs for care and support makes arrangements for the adult to live in accommodation of a particular type. As a consequence of these arrangements, the adult may move to another area. In this situation, the effect of this provision is that the adult will be treated, for the purposes of this 2014 Act, as being ordinarily resident in the area of the local authority which made the arrangements (and not in the area to which they move).

Section 194(2) contains a power to make regulations on the types of accommodation to which this provision applies.

The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 specify that section 194(1) will apply to care home accommodation. These provisions cover adults with care and support needs who are living in such accommodation in Wales.

Where arrangements are made for the adult to be accommodated in England, Scotland or Northern Ireland, the provisions in Schedule 1 to the Care Act 2014 will apply. Guidance on cross border placements and the application of Schedule 1 is contained in Annex 2. Practice Guidance on cross border placements is being prepared by the Social Care Institute for Excellence (SCIE) and will be published on its website.

## Dispute resolution

The provisions in Part 11 of the 2014 Act on dispute resolution cover disputes between local authorities about ordinary residence, portability of care and support and provider failure under the 2014 Act. They also cover disputes about ordinary residence under Section 117 of the Mental Health Act 1987.

Section 195 makes provision for determining disputes between local authorities about ordinary residence for the purposes of the 2014 Act, or between a sending and a receiving authority about the application of section 56 of the 2014 Act (portability of care and support). These provisions cover ordinary residence and disputes about ordinary residence and the portability of care and support between local authorities in Wales only. Section 195(2) contains a power to make regulations governing the way such disputes are handled.

The Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2015 specify the procedures which local authorities **must** follow in handling disputes about ordinary residence and portability of care and support.

Section 189(8) (on provider failure) provides that any dispute about the application of section 189 is to be determined under section 195 as if it were a dispute of the type mentioned in section 195(1). The regulations under section 195(2) therefore also apply to disputes about co-operation and about costs incurred under the temporary duty.

Section 117(4) of the Mental Health Act 1983 (as inserted by section 75 of the Care Act 2014) provides that where there is a dispute about where a person was ordinarily resident for the purpose of section 117(3), and the dispute is between local social services authorities in Wales, section 195 of the 2014 Act applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of the 2014 Act.

The regulations and this code of practice replace the statutory guidance on ordinary residence issued in 1993 (WOC 41/93 / LASS 5/133/10).

## Ordinary Residence

Where a person is ordinarily resident is crucial in deciding which local authority is required to meet their care and support needs. 'Ordinary residence' is one of the key tests which must be met to establish whether a local authority is required to meet a person's eligible needs. It is therefore crucial that local authorities establish, at the appropriate time, whether a person is ordinarily resident in their area, and whether such duties arise.

The test for ordinary residence, applies differently in relation to adults with needs for care and support and carers. For adults with care and support needs, the local authority in which the adult is ordinarily resident will be responsible for meeting their eligible needs. For carers, the responsible local authority will be the one where the adult for whom they care is ordinarily resident. Establishing responsibility for the provision of support for carers, therefore, requires the local authority to consider the ordinary residence of the adult needing care and support.

The determination of ordinary residence should not delay the process of assessment or determination of eligible needs, nor should it stop the local authority from meeting the person's needs. In cases where ordinary residence is not certain, the local authority **should** meet the individual's needs first, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities.

## How to determine ordinary residence

There is no definition of 'ordinary residence' in the Social Services and Well-being (Wales) Act 2014, and the term should therefore be given its ordinary and natural meaning. In most cases, establishing a person's ordinary residence is a straightforward matter. However, there will be circumstances in which ordinary residence is not as clear-cut (for example, when people spend their time in more than one area, or move between areas). Where uncertainties arise, local authorities **should** always consider each case on its own merits.

The concept of ordinary residence involves questions of both fact and degree. Factors such as time, intention and continuity (each of which may be given different weight according to the context) have to be taken into account. The courts have considered the meaning of 'ordinary residence' and the leading case is that of *Shah v. London Borough of Barnet* (1983). In this case, Lord Scarman stated that:

*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.*

Local authorities **should** always have regard to this case when determining the ordinary residence of people who have capacity to make their own decisions about where they wish to live. (See below for guidance on determining ordinary residence if the person lacks capacity to make decisions about their accommodation.)

In particular, local authorities **should** apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes, irrespective of whether they own, or have an interest in, a property in another local authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place.

### Cases where a person lacks capacity

All issues relating to mental capacity should be decided with reference to the Mental Capacity Act 2005 (“the 2005 Act”) and the associated code of practice under this Act. It should always be assumed that adults have capacity to make their own decisions, including decisions relating to their accommodation and care, unless it is established to the contrary.

The test for capacity is specific to each decision at the time it needs to be made, and a person may be capable of making some decisions but not others. It is not necessary for a person to understand local authority funding arrangements to be able to decide where they want to live.

If it can be shown that a person lacks capacity to make a particular decision, the 2005 Act makes clear who can take decisions on behalf of others, in which situations and how they should go about doing this. For example, if a person lacks capacity to decide where to live, a ‘best interests’ decision about their accommodation should be made under the 2005 Act. Under section 1(5) of the 2005 Act, any act done, or decision made (which would include a decision relating to where a person without capacity should live), must be done in the best interests of the person who lacks capacity. Section 4 of the 2005 Act explains how to work out the best interests of a person who lacks capacity, and provides a checklist.

Difficulties can arise when applying the Shah test in cases where an adult lacks the capacity to determine where to live. In these cases, different case law applies. For example, the case of *R.v Waltham Forest LBC Ex p Vale* set out a two-part approach to the application of the Shah test to a person unable to make decisions. The Supreme Court has recently explained that these approaches were “complimentary common sense approaches to the application of the Shah test” due to the unusual facts of the case<sup>18</sup>.

### People with no settled residence

Where doubts arise in respect of a person’s ordinary residence, it is usually possible for local authorities to decide that the person has resided in one place long enough, or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that local authorities conclude that someone is of no settled residence. For example, if a person has clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change, a local authority may conclude the person to be of no settled residence.

Section 35 of the Social Services and Well-being (Wales) Act 2014 makes clear that local authorities have a duty to meet the needs of adults if they are present in its area but of no settled residence and the other conditions are met. Sections 40 and 42 of the 2014 Act make similar provision in relation to the duties to meet the needs of carers of adults. In this regard, adults who have no settled residence, but are physically present in the local authority's area, should be treated the same as those who are ordinarily resident.

A local authority may conclude that a person arriving from abroad is of no settled residence, including those people who are returning to Wales after a period of residing abroad and who have given up their previous home in this country.

### Ordinary residence when arranging accommodation in another area

There will be cases where the local authority considers it appropriate for a person's care and support needs to be met by the provision of accommodation in the area of another authority. If the person has needs which can only be met through certain types of accommodation, then in addition to their involvement in the planning process, the person will also have a right to make a choice about their preferred accommodation. This right allows the person to make a choice about certain types of accommodation, including where this is situated within the area of another authority. Provided that certain conditions are met, the local authority **must** arrange for the preferred accommodation the person has chosen. (See the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 and the codes of practice relating to Parts 4 and 5 on direct payments, choice of accommodation, financial assessment and charging).

This will mean that local authorities will in some circumstances be required to arrange accommodation that is located in a different area. Moreover, there will also be other situations in which a local authority chooses to arrange accommodation for a person in another area, because that has been agreed with the person concerned. In any such case, it should be clear which local authority is responsible for meeting the person's needs in the future.

Section 194(1) to (3) of the Social Services and Well-being (Wales) Act 2014, and the regulations made under it, set out where an adult is to be treated as being ordinarily resident if their care and support needs can be met only if they are living in certain specified accommodation. The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 specify that this applies to care home accommodation only – i.e. accommodation within the meaning of section 3 of the Care Standards Act 2000.

This means that, where an adult has needs which can only be met through the provision of care home accommodation, and the accommodation is arranged in another local authority area, then the principle of "deeming" ordinary residence applies. The adult is therefore treated as remaining ordinarily resident in the area where they were resident before the placement began. The consequence of this is that the local authority which arranges the accommodation will remain responsible for meeting the person's needs, and responsibility does not transfer to the authority in whose area the accommodation is physically located. The 'placing' authority's responsibility will continue in this way for as long as the adult's needs are met by the specified type of accommodation.

The ordinary residence 'deeming' principle applies most commonly where the local authority provides or arranges the accommodation directly. However, the principle also applies where a person takes a direct payment and arranges their own care and support. In such cases the individual has the choice over how their needs are met, and arranges their own care and support. If the care and support plan stipulates that the person's needs can be met only if the adult is living in care home accommodation, and the person chooses to arrange that accommodation in the area of a local authority which is not the one making the direct payment, then the same principle would apply – i.e. the local authority which is meeting the person's care and support needs by making a direct payment would retain responsibility. However, if the person chose accommodation that is outside what was specified in the care and support plan or of a type of accommodation not specified in the regulations (for example, if the person moves into a shared lives arrangement or into supported living accommodation), then the 'deeming' principle would not apply.

If a local authority arranges to place an individual in care home accommodation, or becomes aware that an individual with a direct payment has done so themselves, the authority **should** inform the host authority, to ensure the host authority is aware of the person in their area. The first authority **should** ensure that satisfactory arrangements are made before the accommodation begins for any necessary support services which are provided locally, such as day care, and that clear agreements are in place for funding all aspects of the person's care and support.

In practice, the first local authority may enter into agreements to allow the authority where the accommodation is located to carry out functions on its behalf. This may particularly be the case where the accommodation is located some distance away, and some functions can be performed more effectively locally. Local authorities may make arrangements to reimburse to each other, any costs occurred through such agreements. However, local authorities **should** take account of their on-going obligations towards the individual when arranging for such types of accommodation.

There may be occasions where a provider chooses to change the type of care which it provides – for instance, to de-register a property as a care home and to redesign the service as a supported living scheme. In these circumstances the placing authority (i.e. the local authority where the person is deemed to be ordinarily resident) **should** reassess the individual's care and support needs to determine whether their needs could be met by the new service, or whether their needs can only be met through accommodation in a care home. If it is determined that the individual's needs could best be met by staying with the new service, and the individual chooses to remain in that setting, then the status of the individual will change from that of a care home resident to a tenant in supported living accommodation. The individual's place of ordinary residence will therefore have changed, and responsibility for meeting their care and support needs will transfer to the local authority where they are living. Where, following re-assessment, it is decided that the person's needs can still only be met by being accommodated in a care home, the placing local authority will need to arrange a different care home placement for that person. In these circumstances, the deeming provisions will continue to apply and responsibility for meeting that person's care support needs will remain with the placing authority.

## NHS accommodation

Where a person goes into hospital, or other NHS accommodation, there may be questions over where they are ordinarily resident, especially if they are subsequently discharged into a different local authority area. For this reason, section 194 of the Social Services and Well-being (Wales) Act makes clear what should happen in these circumstances.

A person for whom NHS accommodation is provided is to be treated as being ordinarily resident in the local authority where they were ordinarily resident before the NHS accommodation was provided. This means that where a person, for example, goes into hospital, they are treated as ordinarily resident in the area where they were living before they went into hospital. This applies regardless of the length of stay in the hospital, and means that responsibility for the person's care and support does not transfer to the area of the hospital, if this is different from the area in which the person lived previously.

This requirement also applies to NHS accommodation in another part of the UK. If a person who is ordinarily resident in Wales goes into hospital in England, Scotland or Northern Ireland, their ordinary residence will remain in Wales (in the local authority in which they resided before going into hospital) for the purposes of responsibility for the adult's care and support.

Continuing NHS Healthcare (CHC) is a package of care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need. In cases where people are assessed as eligible for CHC and are placed, or have already been placed in a care home outside their area, the placing Local Health Board (LHB) will remain responsible for funding, monitoring and reviewing the care home placement.

Where a person is placed in a care home but is not eligible for CHC, the funding responsibilities for NHS Funded Nursing Care rest with the receiving LHB, or Clinical Commissioning Group (CCG) in England. Guidance on cross border arrangements where a person is eligible for NHS Funded Nursing Care will be contained in the Practice Guidance published by SCIE.

## Mental health aftercare

Under section 117 of the Mental Health Act 1983, local authorities together with Local Health Boards have a duty to provide mental health aftercare services for people who have been detained in hospital for treatment under certain sections of the 1983 Act who are in need of such services. These services **must** have the purposes of "meeting a need arising from or related to the person's mental disorder" and "reducing the risk of a deterioration of the person's mental condition and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder." The range of services which can be provided is broad.

The duty on local authorities to commission or provide mental health aftercare rests with the local authority for the area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes resident in another area where they are detained, or on leaving hospital. The responsible local authority may change, if the person is ordinarily resident in another area immediately before a subsequent period of detention which would require section 117 aftercare services.

## Other common situations

### Temporary absences

Having established ordinary residence in a particular place, this should not be affected by the individual taking a temporary absence from the area. The courts have held that temporary or accidental absences (including, for example, holidays or hospital visits in another area) should not break the continuity of ordinary residence, and local authorities **should** take this into account.

The fact that the person may be temporarily away from the local authority in which they are ordinarily resident, does not preclude them from receiving any type of care and support from another local authority if they become in urgent need. Local authorities have powers in the 2014 Act to meet the needs of people who are known to be ordinarily resident in another area, at their discretion and subject to their informing the authority where the person is ordinarily resident.

### People with more than one home

Although in general terms it may be possible for a person to have more than one ordinary residence (for example, a person who divides their time equally between two homes), this is not possible for the purposes of the 2014 Act. The purpose of the ordinary residence test in the 2014 Act is to determine which single local authority has responsibility for meeting a person's eligible needs, and this purpose would be defeated if a person could have more than one ordinary residence.

If a person appears genuinely to divide their time equally between two homes, it would be necessary to establish (from all of the circumstances) to which of the two homes the person has the stronger link. Where this is the case, it would be the responsibility of the local authority in which the person is ordinarily resident, to provide or arrange care and support to meet the needs during the time the person is temporarily away at their second home.

### Transition from children's to adult services

When a young person with social care needs reaches the age of 18, the duty on local authorities to provide accommodation and services under children's legislation usually ends. If a child or young person has been placed in residential accommodation in the area of a different local authority, and they subsequently turn 18, they are likely to remain the responsibility of the placing authority.

In *R (Cornwall) v Secretary of State for Health*<sup>19</sup>, the Supreme Court held that a young person, who had been placed in foster care in South Gloucestershire which had been arranged by Wiltshire Council under the Children Act 1989, continued to be ordinarily resident in Wiltshire when he reached 18. The Court set out that the underlying purpose of both children's and adult legislation is that "an authority **should** not be able to export its responsibility for providing the necessary accommodation by exporting the person who is in need of it" and it would be highly undesirable for there to be a hiatus in the legislation whereby a young person placed in a different area would become ordinarily resident in that area on their 18th birthday.

In some cases the young person may have 'looked after status'. This broadly means that the child or young person is in a local authority's care by virtue of a care order or is provided with accommodation by a local authority under Part 6 of the Act. A young person's 'looked after status' ends when they reach 18, but the local authority which was formerly responsible for them retains ongoing duties, for example to provide advice and assistance. These duties continue after the person has reached 18, and would normally be the responsibility of the placing authority. However, the residential accommodation may be provided under adult legislation.

## Dispute resolution

### Resolving disputes about ordinary residence and portability of care and support

Where disputes occur, local authorities **must** take all reasonable steps to resolve the dispute between the various parties. This may include one local authority agreeing responsibility, or bespoke agreements to share any costs involved in meeting the person's needs. Where disputes cannot be resolved through discussion, the Welsh Ministers (or a person appointed by them) may be required to determine disputes.

Disputes should not run on indefinitely. Local authorities **must** take all steps necessary to resolve the dispute themselves before making a referral for a determination. If, having taken appropriate legal advice and considered the position carefully, they are still unable to resolve a particular dispute, they **must** apply for a determination. A determination should only be considered as a last resort.

It is critical that the person does not go without the care they need while a dispute is being resolved. One of the local authorities involved in the dispute **must** provisionally accept responsibility for the person at the centre of the dispute and be providing services. Where local authorities cannot agree which authority should accept provisional responsibility for the provision of services, the Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2015 provide that the local authority in which the person is living or is physically present **must** accept responsibility until the dispute is resolved. If the person is homeless, the authority in whose area that person is physically present **must** do so. The local authority which has accepted provisional responsibility is referred to as the 'the lead local authority'.

The Welsh Ministers or appointed person will not make a determination unless there is evidence that one local authority has provisionally accepted responsibility for the provision of services. The provisional acceptance of responsibility by one local authority does not influence the determination made by the Welsh Ministers.

If the determination subsequently finds another local authority to be the authority of ordinary residence, the lead local authority can recover costs from the authority which should have been providing the relevant care and support.

The Welsh Ministers or appointed person cannot make determinations in relation to services that may be provided in the future. Local authorities **should** note that where disputes arise as set out in the regulations, the assessed needs of the person **should** be met during the period of dispute. Local authorities **should not** provide reduced packages of care and support while the dispute is being determined.

Applications for a determination on ordinary residence can only be made where two or more local authorities are in dispute about a person's place of ordinary residence. Where the local authorities are in agreement about a person's ordinary residence, but the person is unhappy with the decision, the person would have to pursue this with the authorities concerned, and could not apply to the Welsh Ministers or an appointed person for a determination.

The Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2015 also apply to the resolution of disputes between authorities in Wales about a person's ordinary residence for the purposes of section 117(4) of the Mental Health Act 1983.

### Process for seeking a determination: ordinary residence

Where a lead local authority approaches another authority about a person's ordinary residence, but then does not continue engaging in a constructive dialogue to resolve the dispute with the other local authority, the other local authority can apply to the Welsh Ministers or appointed person for a determination. The other local authority **should** follow the steps set out in the regulations, including providing evidence of the attempts it has made to engage with the other authority.

The Welsh Ministers or appointed person will not allow ordinary residence disputes to run on indefinitely once they have been referred for a determination. Any local authority failing to have due regard to a determination would put itself at risk of a legal challenge by the resident or their representative or the other local authorities to the dispute.

Local authorities may wish to seek legal advice before making an application for a determination, although they are not required to do so. If legal advice is sought, local authorities may, in addition to the required documentation, provide a separate legal submission. Where legal submissions are included, there should be evidence that the submissions have been exchanged between the local authorities in dispute.

All applications for Welsh Ministers' determination should be sent to the Welsh Government at the address below:

Social Services and Integration Directorate  
Welsh Government Offices  
Cathays Park  
Cardiff CF10 3NQ

If during a determination of the ordinary residence dispute by the Welsh Ministers or appointed person, a local authority in dispute is asked to provide further information to the Welsh Ministers or appointed person, that local authority **must** provide that information without delay.

If the local authorities involved in the dispute reach an agreement whilst the Welsh Ministers are considering the determination, they **should** notify the Welsh Government at the above address. Both parties **must** confirm that the dispute has been resolved after which the determination will be closed down.

## Reconsidering disputes

If further facts come to light after a determination has been made, it may be appropriate for the Welsh Ministers or appointed person to reconsider the original determination. As a consequence of this, a different determination may be substituted. For example, because of the first determination, local authority A has paid an amount to local authority B but because of the effect of the second determination, some or all of the amount paid by local authority A to local authority B was not required to be paid. In this situation local authority B **must** repay that sum to local authority A.

Any review of the determination **must** begin within three months of the date of the original determination. This is needed to ensure clarity and fairness in the process and minimise the amount of time taken for determinations to be made.

## Financial adjustments between local authorities

Sometimes a local authority has been paying for a person's care and support, but it becomes apparent that the person is in fact ordinarily resident elsewhere. In these circumstances the local authority which has been paying for that person's care can reclaim the costs from the local authority where the person was ordinarily resident.

This can occur in cases where it is not clear initially where the person is ordinarily resident. In order to ensure that the individual does not experience any delay to their care due to uncertainty over their ordinary residence, local authorities should be able to recover any losses due to initial errors in deciding where a person is ordinarily resident. This also extends to costs spent supporting the carer of the person whose ordinary residence was in dispute.

However, it does not apply where the local authority has chosen to meet the person's needs in the knowledge they were ordinarily resident elsewhere. If a determination has been revised as referred to in the paragraphs above that covers reconsideration of dispute, and because of the first determination, local authority A has paid an amount to local authority B, but because of the effect of the second determination, some or all of the amount paid by local authority A to local authority B was not required to be paid, local authority B **must** repay that sum to local authority A.

The 2014 Act also provides for the recovery of reasonable expenses incurred by a local authority in accommodating and maintaining a child who is without parents, or is lost or abandoned etc. (under section 76(1)) and who is ordinarily resident in another authority. An authority may also recover reasonable expenses when it is accommodating a child, ordinarily resident in another authority, who is removed or kept away from home under Part 5 of the Children Act 1989, in police protection or whom it has been requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984 (provided that the child is not maintained in a community home, controlled community home, or hospital).

## Cross-border disputes

The procedure for handling disputes about a person's ordinary residence between a local authority in Wales and a local authority in England or Scotland (or a Health and Social Care Trust in Northern Ireland) are set out in the Care and Support (Cross-Border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014. These also cover disputes about a person's ordinary residence in connection with section 117 of the Mental Health Act 1983 (after care services). Guidance on cross-border placements is attached at Annex 2 to this code and in the Practice Guidance issued by SCIE.

## Annex 1

### Other relevant Guidance, Codes of Practice and additional Information

**Social Services and Well-being (Wales) Act 2014** provides provisions to reform social care law, to make provisions about improving the well-being outcomes for people who need care and support and carers who need support.

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Iid=5664>

**Housing (Wales) Act 2014** provides details of the new duties on local authorities in respect of providing prevention focused homelessness services, new registration and licensing requirements for private sector landlords, powers for local authorities to increase council tax charges on second homes, and requirements to meet accommodation needs of gypsies and travellers. The Act will come into effect in April 2015.

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Iid=8220>

**Care Act 2014 – Section 76** Prisoners and persons in approved premises etc. sets out provisions within the Care Act that provide care and support for adult prisoners in the secure estate in England (this includes adults in approved premises and other bail accommodation, as well as people aged over 18 years in young offender institutions, secure children's homes and secure training centres).

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

**Mental Health Measure (Wales) 2010** sets out arrangements to help people with mental health problems by:

- improving access to primary mental health support services
- improving care and treatment planning for people using secondary mental health services

<http://wales.gov.uk/topics/health/nhswales/healthservice/mental-health-services/measure/?lang=en>

**Policy Implementation Guidance for Mental Health Services for Prisoners 2014** sets out a vision for mental health services for prisoners and identifies some issues that will need to be addressed to get there.

<http://wales.gov.uk/topics/health/nhswales/healthservice/mental-health-services/?lang=en>

Legal Aid, Sentencing and Punishment of Offenders 2012 sets out provision about legal aid; provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; and to amongst other duties, to amend section 76 of the Criminal Justice and Immigration Act 2008 (self defence). Section 104 designates that a child who is remanded to youth detention accommodation is to be treated as a child who is looked after by the designated authority.

<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

**Criminal Justice and Immigration Act 2008** sets out further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to make further provision about the management of offenders; to amend the criminal law; and amongst other duties, makes further provision for combatting crime and disorder

<http://www.legislation.gov.uk/ukpga/2008/4/contents>

**The Offender Rehabilitation Act 2014** extends statutory supervision in England and Wales to around 50,000 offenders with sentences of less than 12 months. These offenders will serve their whole sentence in a resettlement prison.

<http://www.legislation.gov.uk/ukpga/2014/11/contents/enacted>

**Access to Justice** – A multi-agency guidebook supporting the responsive and appropriate management of adults with a learning disability in the criminal justice system in Wales published in 2013. It is intended to support commissioners, planners and practitioners across health, social care and criminal justice services in Wales in improving service provision.

<http://www.wales.nhs.uk/sitesplus/888/page/67512>

**The 'Wales Reducing Re-offending Strategy: 2014-2016'** provides a vehicle through which collaborative working can be enhanced, thereby ensuring resources can be targeted to their maximum effect. A key objective within the Strategy is to put in place measures to ensure all offenders have access to health and social care services appropriate to their needs.

**Policing and Crime Act 2009** – extends the mandate to formulate and implement a strategy to reduce reoffending to local authorities as a 'responsible authority' within Community Safety Partnerships (CSPs). This duty requires local areas to fully understand offender profiles, the ways in which services can address the needs of offenders and critically, where resources **should** be targeted to achieve a reduction in reoffending.

### **The Youth Justice Board for England and Wales Order 2000**

In April 2000, the Youth Justice Board for England and Wales (YJB) took responsibility for commissioning places in the secure estate for children and young people in England and Wales, and for placing them after they had been remanded or sentenced by the courts.

**Children and Youth People First** - The Welsh Government and the Youth Justice Board's joint strategy to improve services for young offenders or those at risk of offending.

<https://www.gov.uk/government/publications/youth-justice-strategy-for-wales-children-and-young-people-first>

**Crime and Disorder Act** - The precise requirements of the Act are that youth offending teams shall include at least one of each of the following:

(a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; (c) a police officer; (d) a person nominated by a Local Health Board, any part of whose area lies within the local authority's area; (e) a person nominated by the chief education officer appointed by the local authority

**Youth to Adult Transitions Guidance and Principles for Wales** - improving the way youth offending teams and the National Probation Service work together.

<https://www.gov.uk/government/publications/youth-to-adult-transition-principles-and-guidance-for-wales>

**Joint guidance on mental health in the youth justice system** - Policy implementation guidance to address the mental health problems of children and young people in the youth justice system.

<https://www.gov.uk/government/publications/joint-guidance-on-mental-health-in-the-youth-justice-system>

**National standards for youth justice services** - Standards for youth justice services, for youth offending teams and other professionals working with young people in the justice system

<https://www.gov.uk/government/publications/national-standards-for-youth-justice-services>

## Annex 2

### Cross-border placements for adults

This annex to the code of practice covers:

- local authorities' (in Northern Ireland, Health and Social Care (HSC) Trusts) responsibilities with respect to placing individuals into residential care accommodation in different territories of the UK
- those matters local authorities (or HSC Trusts) should have regard to when considering, planning and carrying out a cross border placement
- the process for resolving disputes that may arise in relation to a cross border placement

### Definitions

First authority – the local authority (or Health and Social Care (HSC) Trust in Northern Ireland) which places the individual in a cross border placement.

Second authority – the local authority (or HSC Trust) into whose area the individual is placed or to be placed.

### Introduction

Schedule 1 to the Care Act 2014 sets out certain principles governing those occasions when a local authority decides that a person's need for care and support is best met by a placement into residential care in a different part of the UK.

Schedule 1 ensures that the local authority which makes the placement continues to be responsible for the costs of the placement. The Devolved Administrations in Wales, Scotland and Northern Ireland worked with the UK Government to agree the principles in Schedule 1.

Schedule 1 gives the Secretary of State for Health the power to make regulations governing disputes between local authorities in different parts of the UK. These include which Minister ('Responsible Person') has the authority to determine a dispute between two authorities, and which authority is the lead authority in relation to such a dispute. The Care and Support (Cross-border Placements and Provider Failure: Temporary Duty) (Dispute Resolution) Regulations 2014 cover England, Wales, Scotland and Northern Ireland.

The Social Services and Well-being (Wales) Act 2014 removes the current restrictions on the powers of Welsh local authorities to place persons in other UK countries. (Until the commencement of the 2014 Act, those powers were limited to placements in England). This means that from April 2016 local authorities in Wales will be able to place persons into residential care in England, Scotland or Northern Ireland.

Guidance to support the implementation of the provisions in Schedule 1 will be issued in each part of the UK. The Welsh Government and the other administrations are keen to ensure that the guidance issued in each part of the UK contains the same principles and approach, so that local authorities can work together in the best interests of people who need care and support.

## Principles and purpose of cross-border placements

### Purpose

People's health and well-being are likely to be improved if they are close to a support network of friends and family. In a small number of cases an individual's friends and family may be located in a different country of the UK from that in which they reside.

In deciding how best to meet an individual's assessed needs, the authority<sup>20</sup> and the individual concerned may reach the conclusion that the individual's well-being is best achieved by a placement into residential care in a different country of the UK. Schedule 1 to the Care Act sets out certain principles governing cross border residential care placements.

As a general rule, responsibility for individuals who are placed in cross-border residential care remains with the first authority. This guidance sets out how the first and second authorities **should** work together in the interests of individuals receiving care and support through a cross-border residential placement.

### Principles

The four administrations of the UK (England, Scotland, Wales and Northern Ireland) have worked together to agree Schedule One and this accompanying guidance. Underpinning this close co-operation have been two guiding principles that those involved in making cross-border residential care placements **should** abide by.

### A person-centred process

The underlying rationale behind Schedule 1 is to improve the well-being of individuals who may benefit from a cross-border residential care placement. If a local authority, in deciding how an individual's assessed care needs can best be met, believes a cross-border placement could be appropriate they should discuss this with the individual and/ or their representative. In making the resulting arrangements, authorities should have regard to views, wishes, feelings and beliefs of the individual. In undertaking an assessment of an adult aged 65 or over local authorities and LHBs will need to consider whether or not the person whose needs are being assessed would benefit from the presence of a carer, friend or advocate.

### Reciprocity and cooperation

The smooth functioning of cross-border arrangements is in the interests of all parties – and most importantly the interests of those in need of residential care – in all authorities and territories of the UK. It is not envisaged that authorities will suffer added financial disadvantage by making cross-border placements. All authorities are expected to co-operate fully and communicate properly. In the circumstances where individuals may need care and support from the second authority (e.g. in the event of unforeseen and urgent circumstances such as provider failure) such care **must** be provided without delay (arrangements to recoup costs can always be made subsequently).

<sup>20</sup> Authority = Local Authority in England, Wales and Scotland. HSC Trust in Northern Ireland.

## Cross-border residential care placements

Authorities **should** follow the following broad process for making cross-border residential care placements. Authorities may wish to adapt this process to fit their needs; but in general, authorities **should** aim to follow, as far as possible, the processes set out below.

Authorities may wish to designate a lead official for information and advice relating to cross-border placements and to act as a contact point.

These steps **should** be followed whenever a cross-border residential placement is arranged by an authority, regardless of whether it is paid for by that authority or by the individual.

### Step One: Arranging to meet an individual's assessed care needs

A need for a cross-border residential care placement will be determined by the local authority, in partnership with the individual concerned, as part of the process of deciding how an individual's assessed needs can best be met.

Authorities **should**, when assessing an individual's social care needs and deciding how those needs can best be met, establish what support networks (e.g. friends and family) the individual concerned has in their current place of residence<sup>21</sup>. In discussions with the individual and other relevant parties, enquiries **should** be made as to whether a support network exists elsewhere. Alternatively, the individual (or their family or friends) may proactively raise a desire to move to an area with a greater support network or to move to an area for other reasons.

Authorities **should** give due consideration as to how to reflect cross-border discussions with the individual in the care planning process.

Where it emerges that residential care in a different territory of the UK may be appropriate for meeting the person's needs, the authority **should** inform the individual concerned (and/ or their representative) of the potential availability of a cross-border placement if the individual (and/ or their representative) has not already raised this themselves.

**Should** the individual wish to pursue the potential for a cross-border placement, the authority will need to consider carefully the pros and cons. Questions the authority may wish to address could include:

- Would the support network in the area of the proposed new placement improve (or at least maintain) the individual's well-being?
- What effect might the change of location have on the individual's well-being? How well are they likely to adapt to their new surroundings?
- Is the individual in receipt of any specialist health care? Will the locality of the proposed new placement allow for the satisfactory continuation of this treatment?
- Where the individual lacks the mental capacity to decide where to live, who is the individual's representative, and how **should** the representative be involved

<sup>21</sup> Cross border placements could occur where a person is living at home or where they are already living in residential care accommodation.

With the permission of the individual concerned (or their representative), the authority **should** approach the friends and/ or family of the individual concerned who are resident in the area of the proposed new placement (and, any friends and/ or family in the area of their current residence) to seek their views of the perceived benefits of the placement and any concerns they may have.

Should a cross-border placement still appear to be in the interests of the individual's well-being, the authority **should** take steps to investigate which providers in the proposed new placement area exist and which are likely to be able to meet the needs of the individual. The authority **should** conduct all necessary checks and exercise due diligence as it would with any other residential care placement.

In preparing a care and support plan, Welsh local authorities **must** involve the individual and any carer of the individual.

The individual **should** be kept informed and involved throughout the process. Their views on suitable providers **should** be sought and their agreement achieved before a final decision is made. Consideration **should** be given to the benefits of advocacy in supporting the individual to express their wishes.

The individual **should** also be informed of the likelihood of the first authority giving notification of the placement to the second authority, seeking that authority's assistance with management of the placement or with discharge of other functions, for example reviews, and of what this would involve. Where, for example, this would involve the sharing of information or the gathering of information by the second authority on behalf of the first, (see next section) the individual **should** be informed of this at the outset and their consent sought.

Authorities **should** strive to offer people a choice of placements.

## Step Two: Initial liaison between 'first' and 'second' authority

Once the placement has been agreed in principle (with the individual concerned and/ or their representative) and the authority has identified a potential provider they **should** immediately contact the authority in whose area the placement will be made.

The first authority **should**:

- notify the second authority of their intention to make a cross border residential care placement
- provide a provisional date on which they intend for the individual concerned to commence their placement
- provide the second authority with details of the proposed residential care provider
- seek that authority's views on the suitability of the residential accommodation.

The initial contact can be made by telephone, but **should** be confirmed in writing.

The second authority has no power to 'block' a residential care placement into its area as the first authority contracts directly with the provider. In the event of the second authority objecting to the proposed placement, all reasonable steps

**should** be taken by the first authority to resolve the issues concerned before making the placement.

Following the initial contact and any subsequent discussions (and provided no obstacles to the placement taking place have been identified) the first authority **should** write to the second authority confirming the conclusions of the discussions and setting out a timetable of key milestones up to the placement commencing.

The first authority **should** inform the provider that the placement is proposed – in the same way as with any residential care placement. The first authority **should** ensure that the provider is aware that this will be a cross-border placement.

The first authority should contact the individual concerned and/ or their representative to confirm that the placement can go ahead and to seek their final agreement. The first authority should also notify any family/ friends that the individual has given permission and/ or requested be kept informed.

The first authority **should** make all those arrangements that it would normally make in organising a residential care placement in its own area.

### Step Three: arrangements for ongoing management of a placement

A key necessity is for the first authority to consider with the second authority, arrangements for the on-going management of the placement and assistance with the performance of relevant care and support functions.

The first authority will retain responsibility for the individual and the management and review of their placement. In this regard, the authority's responsibilities to the individual are no different than they would be if the individual was placed with a provider in the authority's own area.

However, it is recognised that the practicalities of day-to-day management of a placement potentially hundreds of miles distant from the authority may prove difficult.

As such, the first authority may wish to make arrangements for the second authority to assist with the day-to-day placement management functions, for example where urgent in-person liaison is required with the provider and/ or individual concerned, or with regular care reviews which are for the first authority to perform but with which the second authority may be able to assist (e.g. by gathering information necessary for the review and passing this to the first authority to make a decision).

It **should** be made clear that ultimate responsibility for exercising the functions remains with the first authority (they are obtaining assistance with the performance of these functions, or, where applicable, authorising the exercise of functions on their behalf).

Any such arrangement **should** be detailed in writing – being clear as to what role the second authority is to play and for how long. Clarity **should** also be provided on the regularity of any reporting to the first authority and any payment involved for services provided by the second authority.

## Step Four: Confirmation of placement

When the placement has been confirmed, the first authority **should** notify the second authority and detail in writing all the arrangements made with the second authority for assistance with on-going placement management and other matters. The first authority **should** also confirm the date at which the placement will begin.

The second authority **should** acknowledge receipt of these documents/information and give its agreement to the arrangements in writing.

The first authority **should** provide the individual concerned and/ or their representative with contact details (including whom to contact during an emergency) for both the first and second authority. If required, it is expected that the first authority will be responsible for organising suitable transport, and for the costs of it, to take the individual and their belongings to their new placement.

As would be the case normally, the first authority will normally be responsible for closing off previous placements or making other necessary arrangements regarding the individual's prior residence.

## Other issues to be considered during the organisation of a placement

### Timeliness of organising and making a placement

Steps one to four **should** be conducted in a timely manner and the time taken **should** be proportionate to the circumstances.

### Self-arranged placements

This guidance does not apply in relation to individuals who arrange their own care. Individuals who arrange and pay for their own care will normally become ordinarily resident in and/or the responsibility of the area to which they move. This guidance does apply to individuals who pay for their own residential care where that care is arranged by an authority.

### Issues that may arise once a placement has commenced: Where the individual requires a stay in NHS accommodation

Should the individual placed cross-border need to go into NHS accommodation for any period of time then this stay will not interrupt the position regarding ordinary residence or responsibility deemed under Schedule One.

If, while the individual is in hospital, a 'retention' fee is payable to the care provider to ensure the individual's place is secured, this will be the responsibility of the first authority.

### Where the individual requires NHS funded nursing care

Should the individual being placed require NHS-funded nursing care, the arrangements for delivering this **should** be discussed between the first authority, the NHS body delivering the care, the NHS body funding the care and the residential care provider prior to the placement commencing. Early (indeed

advance) engagement with the NHS in such circumstances is important in ensuring smooth and integrated provision of services in cross-border placements.

Where the need for nursing care becomes evident after the placement has commenced, the relevant authorities **should** work together to ensure this is provided without delay.

The four administrations of the UK have reached separate bilateral agreements as to which administration shall bear the cost of NHS funded nursing care required for individuals placed cross border into residential care.

In the event of a cross border placement between England and Wales (in either direction), the second authority's health service will be responsible for the costs of NHS nursing care. However, in the event of a cross-border placement between Wales and Scotland, Wales and Northern Ireland, or between Scotland and Northern Ireland, the first authority's health service will retain responsibility for the costs of NHS nursing care.

### Where the individual's care needs change during the placement

In the event that an individual's care needs change during the course of the placement, these **should** be picked up in the course of a review and the care management plan amended as needed.

The first authority retains responsibility for review and amendment of the individual's care package, although it may have agreed with the second authority that the latter will assist it in certain ways. In this case, clarity and communication will be important as to each authority's roles.

If the complaint relates to the care provider, it **should** normally be made to the provider in the first instance and dealt with according to the complaints process of the provider as governed by the applicable legislation, which will normally be the legislation of the administration into which the individual has been placed. –

If the complaint relates to NHS care, it **should** be dealt with according to the legislation governing such complaints in the relevant territory of the UK.

Complaints regarding the first authority **should** be dealt with by the first authority in accordance with the relevant legislation of that territory of the UK, as **should** complaints regarding the individuals' care package. Complaints regarding the second authority **should** be dealt with by the second authority.

If referral to the health ombudsman is necessary this should be made to the ombudsman with responsibility for the provider or authority that is the subject of the complaint. See the subsequent section for how to deal with a dispute that might arise between two or more local authorities.

### Reporting arrangements

There is no legal requirement for local authorities to notify national authorities that a cross-border placement has taken place. However, as UK-wide cross-border placements will generally be a new occurrence, it will be sensible to record the number of placements occurring to best inform future application of the policy. Therefore, authorities **should** record the number of placements made into their area from other territories of the UK and vice versa.

## Disputes between authorities

If authorities have regard to and apply the suggested process and procedures outlined above and, more importantly, if the first and second authority work together in a spirit of reciprocity and cooperation and promptly communicate in order to ensure matters go smoothly, then there should be no need for dispute resolution. A dispute is most likely to occur because of lack of communication or following a communication breakdown/ misunderstanding between first and second authority during the process of arranging the placement.

The four administrations of the UK have worked together on the contents of specific regulations governing the process of resolving a dispute. These regulations cover all disputes that arise about the application of paragraphs 1 to 4 of Schedule 1 to the Act (general non-transfer of responsibility in the case of placements).

These regulations under Schedule 1 state:

- A dispute **must not** be allowed to prevent, interrupt, delay or otherwise adversely affect the meeting of an individual's social care needs<sup>22</sup>.
- The authority in whose area the individual is residing at the time the dispute arises is the lead authority for the purposes of duties relating to coordination and management of the dispute.

In the event of a dispute between two authorities where the individual is living in the area of one of those authorities when the dispute is referred, the Minister/ Northern Ireland Department (NID) in whose jurisdiction that area lies would determine the dispute. In the event of other disputes between authorities, the Ministers/NID in whose jurisdiction those authorities sit would decide between themselves as to who would determine the dispute

Before a dispute is referred to the relevant individual, the local authorities concerned **must** take a number of steps.

The lead authority **must**:

- co-ordinate the discharge of duties by the authorities in dispute
- take steps to obtain relevant information from those authorities
- disclose relevant information to those authorities

Authorities in dispute **must**:

- take all reasonable steps to resolve the dispute between themselves
- co-operate with each other in the discharge of their duties.

Each authority in dispute **must**:

- Engage in constructive dialogue with other authorities to bring about a speedy resolution
- Comply with any reasonable request made by the lead authority to supply information

<sup>22</sup> See further meaning of 'needs' in relation to the four territories under the regulations.

The Regulations specify the contents of a dispute referral as follows.

When a dispute is referred, the following **must** be provided:

- a letter signed by the lead authority stating that the dispute is being referred
- a statement of the facts
- copies of related correspondence.

The statement of facts **must** include:

- details of the needs for care and support of the individual to whom the dispute relates
- which authority, if any, has met those needs, how they have been met and the relevant statutory provision
- an explanation of the nature of the dispute
- any other relevant steps taken in relation to the individual
- details of the individual's place of residence and any former relevant residence
- chronology of events leading up to the dispute
- details of steps authorities have taken to resolve dispute
- where the individual's mental capacity is relevant, relevant supporting information.

The authorities in dispute may make legal submissions and if they do, they **must** send a copy to the other authorities in dispute, and provide evidence that they have done so.

The Responsible Person (i.e. Minister or Northern Ireland Department) to whom the dispute has been referred **must**:

- consult other responsible persons (i.e. Ministers or NI Department) in determining the dispute
- notify those responsible persons of their determination.

## Provider failure

In the event that a provider with which cross-border arrangements for an individual have been made or funded fails and is unable to carry on the care activity as a result, the authority in whose area that individual's social care needs were being met has duties to ensure those needs continue to be met for so long as that authority considers it necessary. In the case of residential placements, as the first authority will normally continue to have overall responsibility, close communication and co-operation between the first and second authority will be important throughout.

In the event of provider failure in Scotland, local authorities are required to perform duties provided for under Part 2 of the Social Work (Scotland) Act 1968 as specified in regulations made by the Secretary of State under paragraphs 1(6) and (7), 2(9) and (10), and 4(5) and (6) of Schedule 1 of the Care Act 2014.

The 2014 Act enables the second authority (where this is an authority in England, Wales or Northern Ireland) to recover costs from the authority which made or funded the arrangements. This power will be commenced in relation to local authorities in Wales at the same time as the temporary duty is commenced in relation to them.

If a dispute later emerges, for example regarding costs incurred as a result of the provider failure situation, then the Schedule 1 dispute regulations described above will apply (where this concerns duties on authorities in England, Wales or Northern Ireland).

### Potential future cross-border arrangements

Schedule 1 makes provision for regulation-making powers with respect to applying cross-border principles to direct payments and/ or other types of accommodation which are not arranged by a local authority.

The UK Government and the Devolved Administrations will be keeping under review the possibility of exercising these regulation-making powers, in light of the implementation of residential cross-border placements and policy developments across all UK administrations.