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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1494 (W. 166)**

**SOCIAL CARE, WALES**

**The Care and Support (Disputes about Ordinary Residence, etc.) (Wales) Regulations 2015**

<i>Made</i>	- - - -	<i>7 July 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>10 July 2015</i>
<i>Coming into force</i>	- -	<i>6 April 2016</i>

The Welsh Ministers, in exercise of the powers conferred by section 195(2) of the Social Services and Well-being (Wales) Act 2014 (1), make the following Regulations:

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is The Care and Support (Disputes about Ordinary Residence, etc.) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016 and apply to Wales.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“the appropriate person” (“*y person priodol*”) means the person by whom a dispute is to be determined pursuant to section 195(1) of the Act;

“dispute” (“*anghydfod*”) means a dispute—

- (a) between local authorities about where a person is ordinarily resident in Wales for the purposes of the Act,
- (b) between a sending and receiving local authority under section 56 of the Act (portability of care and support) about the application of that section, or
- (c) between local authorities about the application of section 189 of the Act (provider failure: temporary duty on local authority);

“the lead authority” (“*yr awdurdod arweiniol*”) means, in relation to a dispute, the local authority which (as a result of regulation 2 or otherwise)—

- (a) is meeting the needs of the person to whom the dispute relates, or a carer of that person, as at the date on which the dispute arises, or

(b) if no local authority is meeting those needs at that date, is required to do so by regulation 2(3);

“referred” (“*atgyfeirir*”, *yn cael ei atgyfeirio*”) means referred for determination by the appropriate person, and “refer” (“*atgyfeirio*”) and “referral” (“*atgyfeiriad*”) are to be construed accordingly.

(4) References in these Regulations to the date on which a dispute arises are references to the first date on which a written communication is sent by one of the local authorities (“the first authority”) to another of the local authorities (“the second authority”) which (as the case may be)—

- (a) asserts that, in the first authority’s view, the person to whom the dispute relates is not ordinarily resident in its area for the purposes of the Act, or that the person is ordinarily resident in the second authority’s area for those purposes,
- (b) raises an issue about the application of section 56 of the Act, or
- (c) raises an issue about the application of section 189 of the Act.

(5) In these Regulations, a reference to “the authorities” is a reference to the authorities who are parties to a dispute and includes (where different) a reference to the lead authority in relation to that dispute.

### **Responsibility for meeting needs whilst dispute is unresolved**

2.—(1) The authorities must not allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the person to whom the dispute relates or a carer of that person.

(2) The local authority which is meeting the needs of the person or carer on the date on which the dispute arises must continue to meet those needs until the dispute is resolved.

(3) If no local authority is meeting the needs on the date on which the dispute arises—

- (a) the local authority in whose area the person to whom the dispute relates is living, or
- (b) if the person to whom the dispute relates is not living in the area of any local authority, the local authority in whose area that person is present

must, until the dispute is resolved, perform the duties under the Act in respect of the person and any carer of that person as if the person was ordinarily resident in its area.

(4) If the duty under paragraph (3) falls to be discharged by a local authority (“A”) which is not one of the authorities already a party to the dispute, those authorities must, without delay, bring to A’s attention—

- (a) A’s duty under that paragraph, and
- (b) A’s status as the lead authority for the purposes of these Regulations.

(5) A is not under the duties in these Regulations until the date on which it is aware of, or could reasonably be expected to have been aware of, its status as the lead authority.

(6) Where the dispute is about the application of section 56 (portability of care and support), the authorities must perform the duties under that section notwithstanding the existence of the dispute.

### **Steps to be taken prior to referral of a dispute**

3.—(1) The authorities must, prior to the referral of the dispute, take the steps specified in this regulation.

(2) As soon as reasonably practicable after the date on which the dispute arises—

- (a) the lead authority must seek to identify all the other authorities concerned in the dispute and co-ordinate discussions between those authorities in an attempt to resolve the dispute, and
  - (b) each of the authorities must nominate an individual who will act as the point of contact within that authority in relation to the dispute, and provide the other authorities with the contact details of that individual.
- (3) The lead authority must—
- (a) co-ordinate the discharge, by the authorities, of their duties under this regulation,
  - (b) take steps to obtain from the other authorities information which may be relevant to the determination of the dispute,
  - (c) disclose that information to any other authority, and
  - (d) disclose to the other authorities any information the lead authority itself holds that may help to resolve the dispute.
- (4) The authorities must—
- (a) take all reasonable steps to resolve the dispute between themselves, and
  - (b) co-operate with each other in the discharge of their duties under this regulation.
- (5) Each of the authorities must—
- (a) engage in a constructive dialogue with the other authorities, with a view to bringing about the speedy resolution of the dispute,
  - (b) comply, without delay, with any reasonable request for relevant information made by the lead authority, and
  - (c) keep the other authorities informed of any developments which appear to it to be relevant to the determination of the dispute.
- (6) The lead authority must provide to the persons to whom paragraph (7) applies such information as appears to it to be appropriate about progress in resolving the dispute.
- (7) This paragraph applies to the following persons—
- (a) the person to whom the dispute relates,
  - (b) the carer of that person (if the dispute is about which authority is to meet the needs of a carer), and
  - (c) a representative of the person or carer.
- (8) If the authorities cannot resolve the dispute between themselves within four months of the date on which it arose, the lead authority must refer it to the appropriate person.

**Referral: disputes about ordinary residence or portability of care and support**

- 4.—(1) The referral must include the following documents—
- (a) a letter signed by the lead authority in relation to the dispute,
  - (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (2), and
  - (c) copies of all correspondence between the authorities which relates to the dispute.
- (2) The specified information is—
- (a) an explanation of the nature of the dispute,
  - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose,

- (c) details of the needs of the person to whom the dispute relates (“the relevant person”) from the beginning of the period to which the dispute relates,
  - (d) if the dispute is about which authority is to meet the needs of a carer, details of the needs of the carer from the beginning of the period to which the dispute relates,
  - (e) a statement as to which authority has met those needs since the beginning of the period to which the dispute relates, how those needs have been met and the statutory provisions under which they have been met,
  - (f) details of the relevant person’s place of residence, and of any former places of residence which are relevant to the dispute,
  - (g) in a case where the relevant person’s capacity to decide where to live is relevant to the dispute, either—
    - (i) a statement that the authorities agree that the person has, or lacks, such capacity, or
    - (ii) information which appears to any of the authorities to be relevant to the question of whether the person has, or lacks, such capacity,
  - (h) a statement as to any other steps taken by the authorities in relation to the relevant person or carer of that person, and which may be relevant to the dispute,
  - (i) details of the steps that the authorities have taken to resolve the dispute between themselves, and
  - (j) any other information which appears to any of the authorities to be relevant to the determination of the dispute.
- (3) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.
- (4) If an authority submits legal arguments, it must—
- (a) send a copy of those arguments to the other authorities, and
  - (b) provide evidence to the appropriate person that it has done so.
- (5) If the appropriate person asks any of the authorities to provide further information, the local authority to which this request is made must comply without delay.
- (6) This regulation does not apply to a case to which regulation 5 or 6 applies.

**Referral: disputes about co-operation under section 189 (provider failure: temporary duty on local authority)**

- 5.—**(1) This regulation applies to a dispute which is solely about the application of section 189(7) (a) or (b) of the Act (duty to co-operate).
- (2) The referral must include the following documents—
- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred,
  - (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (3), and
  - (c) copies of all correspondence between the authorities which relates to the dispute.
- (3) The specified information is—
- (a) an explanation of the nature of the dispute,
  - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose,

- (c) details of the steps that the authorities have taken to resolve the dispute between themselves, and
  - (d) any other information which appears to any of the authorities to be relevant to the determination of the dispute.
- (4) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.
- (5) If an authority submits legal arguments it must—
- (a) send a copy of those arguments to the other authorities, and
  - (b) provide evidence to the appropriate person that it has done so.
- (6) If the appropriate person asks any of the authorities to provide further information, the local authority to which this request is made must comply without delay.

**Referral: disputes about costs incurred under section 189 (provider failure: temporary duty on local authority)**

- 6.—**(1) This regulation applies to a dispute which is solely about the application of section 189(7)(c) of the Act (recovery of costs).
- (2) The referral must include the following documents—
- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred,
  - (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (3), and
  - (c) copies of all correspondence between the authorities which relates to the dispute.
- (3) The specified information is—
- (a) an explanation of the nature of the dispute,
  - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose,
  - (c) details of the needs of the person to whom the dispute relates (“the relevant person”) from the beginning of the period to which the dispute relates,
  - (d) if the dispute is about which authority is to meet the needs of a carer, details of the needs of the carer from the beginning of the period to which the dispute relates,
  - (e) a statement as to which authority has met those needs since the beginning of the period to which the dispute relates, how those needs have been met and the statutory provisions under which they have been met,
  - (f) information about the costs being sought to be recovered, including a breakdown of those costs,
  - (g) details of the steps that the authorities have taken to resolve the dispute between themselves, and
  - (h) any other information which appears to any of the authorities to be relevant to the determination of the dispute.
- (4) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.
- (5) If an authority submits legal arguments it must—
- (a) send a copy of those arguments to the other authorities, and
  - (b) provide evidence to the appropriate person that it has done so.

(6) If the appropriate person asks any of the authorities to provide further information, the local authority to which this request is made must comply without delay.

#### **Review of determinations**

- 7.—(1) An authority may make a request to the Welsh Ministers to review the determination.
- (2) Any such request must be made within three months of the date of the determination.
- (3) A review may be carried out by the Welsh Ministers (whether in response to a request or otherwise).
- (4) The Welsh Ministers may confirm the determination or substitute a different determination.

#### **Substituted determinations**

- 8.—(1) Where—
- (a) a review of a determination has been carried out in accordance with regulation 7 and a different determination substituted,
- (b) in consequence of the first determination a local authority (“A”) has paid an amount to another local authority (“B”), and
- (c) the effect of the second determination is that some or all of the amount paid by A to B was not required to have been paid,

B must repay to A the sum that was not required to have been paid.

7 July 2015

*Mark Drakeford*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 195 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) provides for the determination of disputes between local authorities about where a person is ordinarily resident in Wales for the purposes of the 2014 Act and for the determination of disputes between a sending and receiving authority under section 56 of the 2014 Act (portability of care and support) about the application of that section in relation to a person.

These Regulations make further provision about the resolution of such disputes and set out the procedures to be followed when disputes arise.

These Regulations will also apply to a dispute between local authorities in Wales about where a person was ordinarily resident for the purposes of section 117(3) of the Mental Health Act 1983 (after care). Section 117(4) of that Act provides that section 195 of the 2014 Act applies to such a dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of the 2014 Act.

Regulation 2 sets out which local authority is responsible for meeting an individual’s needs until the dispute is resolved.

Regulation 3 provides for the steps to be taken by local authorities to try to resolve the dispute prior to referring it for determination by the Welsh Ministers under section 195 of the Act.

Regulation 4 sets out the documentation that is to be supplied by local authorities when making a referral.

Regulations 5 and 6 set out slightly modified versions of these provisions for specific cases arising under section 189 of the Act.

Regulation 7 provides for the review of determinations. Regulation 8 provides for reimbursement between local authorities when the effect of a revised determination following a review is that sums paid under a previous determination were not owed.