

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Establishing where a person lives, etc.

Section 39 – Where a person’s ordinary residence is

255. The section defines where a person, who is being provided with accommodation to meet their care and support needs, is considered to be “ordinarily resident”. This is to help identify where responsibility lies for funding and/or provision of care.
256. For example, where a person who resides in the area of local authority A (and local authority A funds their care and support) enters a care home in the area of local authority B, their ordinary residence will remain with local authority A. Local authority A therefore retains responsibility for funding their care. They are considered “ordinarily resident” in the area of local authority A during their stay in the care home in local authority B.
257. It is intended that the types of accommodation to which this provision applies will be set out in regulations and for statutory guidance to be available to assist local authorities in deciding where a person is ordinarily resident in complex circumstances.
258. *Subsection (5)* applies the same principle to NHS accommodation. NHS accommodation means accommodation provided as part of the NHS under any relevant NHS legislation. It ensures that a stay in a hospital in England, Scotland, Wales or Northern Ireland will not affect a person’s ordinary residence. This means that their care and support must continue to be provided by the local authority in whose area they were ordinarily resident before their hospital stay.
259. *Subsection (4)* provides that an adult who is being provided with accommodation under section 117 of the Mental Health Act 1983 will be treated as ordinarily resident in the area of the local authority in England or Wales which is under a duty to provide the adult with services by virtue of that section.

Schedule 1 – Cross-border placements

260. *Paragraph 1* of Schedule 1 makes provision to ensure that where a person in England, who has care and support needs and requires residential accommodation to meet those needs, is provided with that accommodation in another part of the UK by a local authority, generally this does not result in a transfer of that authority’s responsibility for that person. Paragraphs 2 to 4 make similar provision in respect of placements in England of people from Wales, Scotland or Northern Ireland which are arranged under the relevant Welsh, Scottish or Northern Irish legislation. These paragraphs also make similar provision in respect of cross-border placements not involving England i.e. Wales-Scotland, Scotland-Northern Ireland and Northern Ireland-Wales.

261. These provisions support the principle of cross-border placements. The types of accommodation to which these provisions apply may differ for each administration depending on the legislation of each jurisdiction.
262. [Schedule 1](#) also provides power for regulations to apply these cross-border provisions to specified types of accommodation, for instance supported living placements, and where accommodation is paid for by direct payments. Such regulations would ensure that an individual who arranges cross-border residential accommodation using their direct payment would generally remain the responsibility of their original local authority (or Health and Social Care trust (“trust”) in the case of Northern Ireland) as would individuals who are living in the specified types of accommodation whilst receiving other care and support services from an authority in another administration.
263. If authorities fall into dispute about the application of paragraphs 1 to 4 of Schedule 1 for example if a local authority which has made a cross-border placement falls into dispute with the authority in whose area that person is placed, the authorities involved may request a determination of the dispute to be made. Such determinations would be made by the Secretary of State or the relevant Ministers or Department in Scotland, Wales or Northern Ireland, depending on the circumstances. Details specifying the dispute resolution process will be set out in regulations and guidance.
264. [Paragraph 6](#) of Schedule 1 enables a local authority or trust to recover the costs of arranging accommodation in England, Wales, Scotland or Northern Ireland from an authority in another of those administrations where the latter was liable to provide the adult in question with that accommodation.
265. [Paragraph 8](#) of Schedule 1 ensures that the general principles of non-transfer of responsibility under paragraphs 1 to 4 of Schedule 1 remain unaffected where the adult in question is provided with NHS accommodation (as defined by section 39(6)).
266. [Paragraph 13](#) of Schedule 1 makes a consequential amendment to the relevant Welsh legislation.
267. [Paragraph 14](#) of Schedule 1 makes transitory modifications to references to the relevant Welsh legislation to deal with the period prior to the commencement of that legislation.

Section 40 – Disputes about ordinary residence or continuity of care

268. If two or more local authorities fall into dispute about where a person is ordinarily resident, or about a person’s continuity of care and support, and cannot resolve the question locally, the local authorities involved may request a determination of ordinary residence to be made by the Secretary of State or a person appointed by the Secretary of State. Details specifying the dispute resolution process will be set out in regulations and statutory guidance. It is intended that the regulations will also set out the procedure local authorities must follow when a dispute occurs when there is a business failure of a provider of care and support who is regulated by the Care Quality Commission.
269. Local authorities may request a review within three months of the original determination being made.

Section 41 – Financial adjustments between local authorities

270. Following a dispute under section 40, or by some other process, it may become apparent that a local authority has been funding a person’s care and support when that person is not in fact ordinarily resident in their area.
271. In such circumstances, section 41 allows for that local authority to reclaim the costs they have paid for that person’s care and support from the local authority where they are or were ordinarily resident.

These notes refer to the Care Act 2014 (c.23) which received Royal Assent on 14 May 2014

272. This section does not apply where the local authority has chosen to meet the person's needs in the knowledge they are ordinarily resident elsewhere.