

## SCHEDULES

### SCHEDULE 1

Section 39

#### CROSS-BORDER PLACEMENTS

##### *Placements from England to Wales, Scotland or Northern Ireland*

- 1 (1) Where a local authority in England is meeting an adult's needs for care and support by arranging for the provision of accommodation in Wales, the adult—
  - (a) is to be treated for the purposes of this Part as ordinarily resident in the local authority's area, and
  - (b) is accordingly not to be treated for the purposes of the Social Services and Well-being (Wales) Act 2014 as ordinarily resident anywhere in Wales.
- (2) Where a local authority in England, in reliance on section 22(4), is making arrangements which include the provision of accommodation in Wales, section 22(4) is to have effect as if for paragraph (a) there were substituted—
  - “(a) the authority has obtained consent for it to arrange for the provision of the nursing care from the Local Health Board for the area in which the accommodation is provided.”
- (3) Where a local authority in England is meeting an adult's needs for care and support by arranging for the provision of accommodation in Scotland—
  - (a) the adult is to be treated for the purposes of this Part as ordinarily resident in the local authority's area, and
  - (b) no duty under Part 2 of the Social Work (Scotland) Act 1968 or sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 applies in the adult's case.
- (4) Where a local authority in England is meeting an adult's needs for care and support by arranging for the provision of accommodation in Northern Ireland—
  - (a) the adult is to be treated for the purposes of this Part as ordinarily resident in the local authority's area, and
  - (b) no duty under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Social Care (Reform) Act (Northern Ireland) 2009 to provide or secure the provision of accommodation or other facilities applies in the adult's case.
- (5) Section 22 (prohibition on provision of health services) is to have effect—
  - (a) in its application to a case within sub-paragraph (1)—
    - (i) as if the references in subsections (1) and (6) to the National Health Service Act 2006 included a reference to the National Health Service (Wales) Act 2006, and
    - (ii) as if the reference in subsection (6) to a clinical commissioning group or the National Health Service Commissioning Board included a reference to a Local Health Board;

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- (b) in its application to a case within sub-paragraph (3)—
    - (i) as if the references in subsections (1) and (6) to the National Health Service Act 2006 included a reference to the National Health Service (Scotland) Act 1978, and
    - (ii) as if the reference in subsection (6) to a clinical commissioning group or the National Health Service Commissioning Board included a reference to a Health Board or Special Health Board;
  - (c) in its application to a case within sub-paragraph (4)—
    - (i) as if the references in subsections (1) and (6) to a service or facility provided under the National Health Service Act 2006 included a reference to health care provided under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Social Care (Reform) Act (Northern Ireland) 2009, and
    - (ii) as if the reference in subsection (6) to a clinical commissioning group or the National Health Service Commissioning Board included a reference to a Health and Social Care trust.
- (6) Regulations may make further provision in relation to arrangements of the kind referred to in this paragraph.
- (7) The regulations may specify circumstances in which, in a case within sub-paragraph (3), specified duties under Part 2 of the Social Work (Scotland) Act 1968 are nonetheless to apply in the case of the adult concerned (and paragraph (b) of that sub-paragraph is to be read accordingly).

*Placements from Wales to England, Scotland or Northern Ireland*

- 2 (1) Where a local authority in Wales is discharging its duty under section 35 of the Social Services and Well-being (Wales) Act 2014 by arranging for the provision of accommodation in England, the adult concerned—
- (a) is to be treated for the purposes of that Act as ordinarily resident in the local authority's area, and
  - (b) is accordingly not to be treated for the purposes of this Part of this Act as ordinarily resident anywhere in England.
- (2) Where a local authority in Wales is arranging for the provision of accommodation in England in the exercise of its power under section 36 of the Social Services and Well-being (Wales) Act 2014—
- (a) the adult concerned is to be treated for the purposes of that Act—
    - (i) in a case where the adult was within the local authority's area immediately before being provided by the local authority with accommodation in England, as remaining within that area;
    - (ii) in a case where the adult was outside but ordinarily resident in the local authority's area immediately before being provided by the local authority with accommodation in England, as remaining outside but ordinarily resident in that area, and
  - (b) the adult concerned is not to be treated for the purposes of this Part of this Act as ordinarily resident anywhere in England (unless the adult was so ordinarily resident immediately before being provided by the local authority with accommodation in England).

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- (3) Where a local authority in Wales is discharging its duty under section 35 of the Social Services and Well-being (Wales) Act 2014 by arranging for the provision of accommodation in Scotland—
  - (a) the adult is to be treated for the purposes of that Act as ordinarily resident in the local authority's area, and
  - (b) no duty under Part 2 of the Social Work (Scotland) Act 1968 or sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 applies in the adult's case.
- (4) Where a local authority in Wales is arranging for the provision of accommodation in Scotland in the exercise of its power under section 36 of the Social Services and Well-being (Wales) Act 2014—
  - (a) the adult concerned is to be treated for the purposes of that Act—
    - (i) in a case where the adult was within the local authority's area immediately before being provided by the local authority with accommodation in Scotland, as remaining within that area;
    - (ii) in a case where the adult was outside but ordinarily resident in the local authority's area immediately before being provided by the local authority with accommodation in Scotland, as remaining outside but ordinarily resident in that area, and
  - (b) no duty under Part 2 of the Social Work (Scotland) Act 1968 or sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 applies in the adult's case.
- (5) But paragraph (b) of sub-paragraph (4) does not prevent a duty mentioned in that paragraph from applying in the case of an adult who was ordinarily resident in Scotland immediately before being provided by the local authority with accommodation in Scotland.
- (6) Where a local authority in Wales is discharging its duty under section 35 of the Social Services and Well-being (Wales) Act 2014 by arranging for the provision of accommodation in Northern Ireland—
  - (a) the adult is to be treated for the purposes of that Act as ordinarily resident in the local authority's area, and
  - (b) no duty under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Social Care (Reform) Act (Northern Ireland) 2009 to provide or secure the provision of accommodation or other facilities applies in the adult's case.
- (7) Where a local authority in Wales is arranging for the provision of accommodation in Northern Ireland in the exercise of its power under section 36 of the Social Services and Well-being (Wales) Act 2014—
  - (a) the adult concerned is to be treated for the purposes of that Act—
    - (i) in a case where the adult was within the local authority's area immediately before being provided by the local authority with accommodation in Northern Ireland, as remaining within that area;
    - (ii) in a case where the adult was outside but ordinarily resident in the local authority's area immediately before being provided by the local authority with accommodation in Northern Ireland, as remaining outside but ordinarily resident in that area, and

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- (b) no duty under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Social Care (Reform) Act (Northern Ireland) 2009 to provide or secure the provision of accommodation or other facilities applies in the adult's case.
- (8) But paragraph (b) of sub-paragraph (7) does not prevent a duty mentioned in that paragraph from applying in the case of an adult who was ordinarily resident in Northern Ireland immediately before being provided by the local authority with accommodation in Northern Ireland.
- (9) Regulations may make further provision in relation to arrangements of the kind referred to in this paragraph.
- (10) The regulations may specify circumstances in which, in a case within sub-paragraph (3) or (4), specified duties under Part 2 of the Social Work (Scotland) Act 1968 are nonetheless to apply in the case of the adult concerned (and paragraph (b) of each of those sub-paragraphs is to be read accordingly).

*Placements from Scotland to England, Wales or Northern Ireland*

- 3 (1) Where a local authority in Scotland is discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 by securing the provision of accommodation in England, the adult in question is not to be treated for the purposes of this Part of this Act as ordinarily resident anywhere in England.
- (2) Where a local authority in Scotland is discharging its duty under a provision referred to in sub-paragraph (1) by securing the provision of accommodation in Wales, the adult in question is not to be treated for the purposes of the Social Services and Well-being (Wales) Act 2014 as ordinarily resident anywhere in Wales.
- (3) Where a local authority in Scotland is discharging its duty under a provision referred to in sub-paragraph (1) by securing the provision of accommodation in Northern Ireland, no duty under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Social Care (Reform) Act (Northern Ireland) 2009 to provide or secure the provision of accommodation or other facilities applies in the case of the adult in question.
- (4) In section 5 of the Community Care and Health (Scotland) Act 2002 (local authority arrangements for residential accommodation outside Scotland)—
  - (a) in subsection (1), after “the 1968 Act” insert “or under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support)”,
  - (b) in subsection (2), for “such arrangements” substitute “persons for whom such arrangements are made”, and
  - (c) for subsections (5) and (6) substitute—
    - “(5) In subsections (1) and (3) above, “appropriate establishment” means an establishment of such description or conforming to such requirements as may be specified in regulations under subsection (1).”
- (5) Regulations may make further provision in relation to arrangements of the kind referred to in this paragraph.

### *Placements from Northern Ireland to England, Wales or Scotland*

- 4 (1) Where there are arrangements under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 for the provision of accommodation in England, the adult in question—
- (a) is to be treated for the purposes of that Order and the Health and Social Care (Reform) Act (Northern Ireland) 2009 as ordinarily resident in the area of the relevant Health and Social Care trust, and
  - (b) is accordingly not to be treated for the purposes of this Part of this Act as ordinarily resident anywhere in England.
- (2) Where there are arrangements under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 for the provision of accommodation in Wales, the adult in question—
- (a) is to be treated for the purposes of that Order and the Health and Social Care (Reform) Act (Northern Ireland) 2009 as ordinarily resident in the area of the relevant Health and Social Care trust, and
  - (b) is accordingly not to be treated for the purposes of the Social Services and Well-being (Wales) Act 2014 as ordinarily resident anywhere in Wales.
- (3) Where there are arrangements under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 for the provision of accommodation in Scotland—
- (a) the adult in question is to be treated for the purposes of that Order and the Health and Social Care (Reform) Act (Northern Ireland) 2009 as ordinarily resident in the area of the relevant Health and Social Care trust, and
  - (b) no duty under Part 2 of the Social Work (Scotland) Act 1968 or sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 applies in the adult's case.
- (4) The reference to the relevant Health and Social Care trust is a reference to the Health and Social Care trust in whose area the adult in question was ordinarily resident immediately before the making of arrangements of the kind referred to in this paragraph.
- (5) Regulations may make further provision in relation to arrangements of the kind referred to in this paragraph.
- (6) The regulations may specify circumstances in which, in a case within sub-paragraph (3), specified duties under Part 2 of the Social Work (Scotland) Act 1968 are nonetheless to apply in the case of the adult concerned (and paragraph (b) of that sub-paragraph is to be read accordingly).

### *Dispute resolution*

- 5 (1) Any dispute about the application of any of paragraphs 1 to 4 to an adult's case is to be determined in accordance with this paragraph.
- (2) If the dispute is between a local authority in England and a local authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.
- (3) If the dispute is between a local authority in England and a local authority in Scotland, it is to be determined by the Secretary of State or the Scottish Ministers.

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- (4) If the dispute is between a local authority in England and a Health and Social Care trust, it is to be determined by the Secretary of State or the Northern Ireland Department.
- (5) If the dispute is between a local authority in Wales and a local authority in Scotland, it is to be determined by the Welsh Ministers or the Scottish Ministers.
- (6) If the dispute is between a local authority in Wales and a Health and Social Care trust, it is to be determined by the Welsh Ministers or the Northern Ireland Department.
- (7) If the dispute is between a local authority in Scotland and a Health and Social Care trust, it is to be determined by the Scottish Ministers or the Northern Ireland Department.
- (8) In Article 36 of the Health and Personal Social Services (Northern Ireland) Order 1972, after paragraph (2) insert—
  - “(2A) Any question under this Order as to the ordinary residence of a person is to be determined by the Department.”
- (9) Regulations must make provision for determining which of the persons concerned is to determine the dispute; and the regulations may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.
- (10) Regulations may make provision for the determination of disputes between more than two parties.
- (11) Regulations may make further provision about determination of disputes under this paragraph or under regulations under sub-paragraph (10); the regulations may, for example, include—
  - (a) provision requiring parties to a dispute to take specified steps before referring the dispute for determination under this paragraph;
  - (b) provision about the procedure for referring the dispute under this paragraph.

#### *Financial adjustments*

- 6 (1) This paragraph applies where—
  - (a) an adult has been provided with accommodation in England, Wales, Scotland or Northern Ireland, and
  - (b) it transpires (whether following the determination of a dispute under paragraph 5 or otherwise) that an authority in another of the territories was, for some or all of the time that the accommodation was being provided, liable to provide the adult with accommodation.
- (2) The authority which made the arrangements may recover from the authority in the other territory the amount of any payments it made towards the making of the arrangements at a time when the other authority was liable to provide the adult with accommodation.
- (3) A reference to an authority is a reference to a local authority in England, Wales or Scotland or a Health and Social Care trust in Northern Ireland.
- 7 (1) In section 86 of the Social Work (Scotland) Act 1968 (adjustments between authorities providing accommodation), in subsections (1) and (10), after “a local

authority in England or Wales” insert “and to a Health and Social Care trust in Northern Ireland”.

(2) In subsection (2) of that section, after “the ordinary residence of a person shall” insert “, in a case where there is a dispute about the application of any of paragraphs 1 to 4 of Schedule 1 to the Care Act 2014 (cross-border placements), be determined in accordance with paragraph 5 of that Schedule; and in any other case, the question shall”.

(3) After subsection (10) of that section insert—

“(10A) A person who, as a result of Schedule 1 to the Care Act 2014 (cross-border placements), is treated as ordinarily resident in an area in England, Wales or Northern Ireland (as the case may be) is to be treated as ordinarily resident in that area for the purposes of this section.

(10B) A person who, as a result of that Schedule, is not treated as ordinarily resident anywhere in England or Wales (as the case may be) is not to be treated as ordinarily resident there for the purposes of this section.”

(4) In section 97 of that Act (extent)—

- (a) in subsection (1), for “sections 86 and 87” substitute “section 87”, and
- (b) after that subsection insert—

“(1A) Section 86 of this Act shall extend to England and Wales and to Northern Ireland.”

*Provision of NHS accommodation not to affect deemed ordinary residence etc.*

- 8
- (1) In a case where, as a result of this Schedule, an adult is treated as ordinarily resident in an area in England, Wales or Northern Ireland (as the case may be), the adult does not cease to be so treated merely because the adult is provided with NHS accommodation.
  - (2) In a case where, as a result of this Schedule, an adult is not treated as ordinarily resident anywhere in England or Wales (as the case may be), the adult continues not to be so treated even if the adult is provided with NHS accommodation.
  - (3) In a case where, as a result of this Schedule, no duty under a relevant enactment applies, the duty does not apply merely because the adult in question is provided with NHS accommodation; and for this purpose “relevant enactment” means—
    - (a) Part 2 of the Social Work (Scotland) Act 1968,
    - (b) sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
    - (c) the Health and Personal Social Services (Northern Ireland) Order 1972, or
    - (d) the Health and Social Care (Reform) Act (Northern Ireland) 2009.
  - (4) In a case where, as a result of paragraph 2(2), (4) or (7), an adult is treated as remaining within, or as remaining outside but ordinarily resident in, an area in Wales, the adult does not cease to be so treated merely because the adult is provided with NHS accommodation.

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### *Direct payments*

- 9 (1) Regulations may provide for this Schedule to apply, with such modifications as may be specified, to a case where accommodation in England, Wales, Scotland or Northern Ireland is provided for an adult by means of direct payments made by an authority in another of the territories.
- (2) The reference in sub-paragraph (1) to direct payments accordingly includes a reference to direct payments made—
- (a) under section 50 or 52 of the Social Services and Well-being (Wales) Act 2014,
  - (b) as a result of a choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, or
  - (c) by virtue of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.

### *Particular types of accommodation*

- 10 (1) Regulations may provide for this Schedule to apply, with such modifications as may be specified, to a case where—
- (a) an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in the regulations,
  - (b) the adult is living in accommodation in England, Wales, Scotland or Northern Ireland that is of a type so specified, and
  - (c) the adult's needs for care and support are being met by an authority in another of the territories providing or arranging for the provision of services other than the accommodation.
- (2) In section 5 of the Community Care and Health (Scotland) Act 2002 (the title to which becomes “Local authority arrangements for residential accommodation etc. outwith Scotland”), in subsection (1), at the end insert “or for the provision in England and Wales or in Northern Ireland of a service or facility of such other description as may be specified in the regulations”.

### *Regulations*

- 11 Regulations under this Schedule—
- (a) if they include provision relating to Wales, may not be made without the consent of the Welsh Ministers;
  - (b) if they include provision relating to Scotland, may not be made without the consent of the Scottish Ministers;
  - (c) if they include provision relating to Northern Ireland, may not be made without the consent of the Northern Ireland Department.

### *Interpretation*

- 12 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Accommodation in England” means accommodation in England of a type specified in regulations under section 39 but not of a type specified in regulations under this paragraph.



- (3) “Accommodation in Wales” means accommodation in Wales of a type specified in regulations under section 194 of the Social Services and Well-being (Wales) Act 2014 but not of a type specified in regulations under this paragraph.
- (4) “Accommodation in Scotland” means residential accommodation in Scotland of a type which may be provided under or by virtue of section 12 or 13A of the Social Work (Scotland) Act 1968, or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, but not of a type specified in regulations under this paragraph.
- (5) “Accommodation in Northern Ireland” means residential or other accommodation in Northern Ireland of a type which may be provided under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972.
- (6) “Local authority in England” means a local authority for the purposes of this Part.
- (7) “Local authority in Wales” means a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014.
- (8) “Local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.
- (9) “The Northern Ireland Department” means the Department of Health, Social Services and Public Safety in Northern Ireland.
- (10) “NHS accommodation” has the meaning given in section 39(6).

#### *Consequential provision*

- 13 In section 194 of the Social Services and Well-being (Wales) Act 2014 (ordinary residence), at the end insert—
- “(8) For provision about cross-border placements to and from England, Scotland or Northern Ireland, see Schedule 1 to the Care Act 2014.
  - (8) Am ddarpariaeth ynghylch lleoliadau trawsffiniol i Loegr, yr Alban neu Ogledd Iwerddon neu o Loegr, yr Alban neu Ogledd Iwerddon, gweler Atodlen 1 i Ddeddf Gofal 2014.”

#### *Transitory provision*

- 14 (1) Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014, this Schedule is to have effect with the modifications set out in this paragraph.
- (2) A reference to that Act in paragraphs 1, 3 and 4 is to be read as a reference to Part 3 of the National Assistance Act 1948.
- (3) In paragraph 2—
- (a) the references in sub-paragraphs (1), (3) and (6) to discharging a duty under section 35 of the Social Services and Well-being (Wales) Act 2014 by arranging for the provision of accommodation are to be read as references to providing residential accommodation under Part 3 of the National Assistance Act 1948;

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- (b) the references in paragraph (a) of each of those sub-paragraphs to the Social Services and Well-being (Wales) Act 2014 are to be read as references to Part 3 of the National Assistance Act 1948;
  - (c) sub-paragraphs (2), (4) and (7) are to be ignored; and
  - (d) in sub-paragraph (10), the references to sub-paragraph (4) and paragraph (b) of sub-paragraph (4) are to be ignored.
- (4) In paragraph 9, the reference to sections 50 and 52 of the Social Services and Well-being (Wales) Act 2014 is to be read as a reference to section 57 of the Health and Social Care Act 2001.
- (5) In paragraph 12, sub-paragraph (3) is to be read as if the following were substituted for it—
- “(3) Accommodation in Wales” means residential accommodation in Wales of a type that may be provided under Part 3 of the National Assistance Act 1948 but not of a type specified in regulations under this paragraph.”
- (6) In that paragraph, sub-paragraph (7) is to be read as if the following were substituted for it—
- “(7) Local authority in Wales” means a local authority in Wales for the purposes of Part 3 of the National Assistance Act 1948.”
- (7) This paragraph does not affect the generality of section 124(2).