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## STATUTORY INSTRUMENTS

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**2014 No. 2829**

### **SOCIAL CARE, ENGLAND**

#### **The Care and Support (Disputes Between Local Authorities) Regulations 2014**

*Made - - - - - 6th October 2014*

*Laid before Parliament 27th October 2014*

*Coming into force in accordance with regulation 1(1)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 40(4) and 125(7) and (8) of the Care Act 2014<sup>(1)</sup>.

#### **Citation, commencement and interpretation**

**1.—(1)** These Regulations may be cited as the Care and Support (Disputes Between Local Authorities) Regulations 2014 and come into force immediately after section 40(1) of the Care Act 2014 comes fully into force.

**(2)** In these Regulations—

“the Act” means the Care Act 2014;

“the appropriate person” means the person by whom a dispute is to be determined pursuant to section 40(1) of the Act;

“dispute” means a dispute—

- (a) about where an adult<sup>(2)</sup> is ordinarily resident for the purposes of Part 1 of the Act;
- (b) between local authorities<sup>(3)</sup> under section 37 of the Act (continuity of care) about the application of that section; or
- (c) between local authorities about the application of section 48 of the Act (provider failure: temporary duty on local authority);

“the lead authority” means, in relation to a dispute, the local authority which—

- (a) is meeting the needs of the adult or carer<sup>(4)</sup> to whom the dispute relates at the date on which the dispute arises; or

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(1) 2014 c.23; see section 125(1) for the powers to make regulations.

(2) See section 2(8) of the Act for the meaning of “adult”.

(3) See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

(4) See section 10(3) of the Act for the meaning of “carer”.

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

“referred” means referred for determination by the appropriate person, and “refer” and “referral” are to be construed accordingly.

(3) 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 adult to whom the dispute relates is not ordinarily resident in its area for the purposes of Part 1 of the Act, or that that adult is ordinarily resident in the second authority’s area for those purposes;
- (b) raises an issue about the application of section 37 of the Act; or
- (c) raises an issue about the application of section 48 of the Act.

(4) In these Regulations, a reference to “the authorities” is a reference to the local 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 adult or carer to whom the dispute relates.

(2) The local authority which is meeting the needs of the adult 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 adult needing care is living; or
- (b) if the adult needing care is not living in the area of any local authority, the local authority in whose area that adult is present,

must, until the dispute is resolved, perform the duties under Part 1 of the Act in respect of the adult or carer as if the adult needing care 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 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 37 (continuity of care), the authorities must perform their duties under sections 37 and 38 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 the other authorities; 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 adult or carer to whom the dispute relates, or to that person's representatives, such information as appears to it to be appropriate about progress in resolving the dispute.
- (7) 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 continuity of care**

- 4.—(1) 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 (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 adult ("the relevant adult") or carer to whom the dispute relates from the beginning of the period to which the dispute relates;
  - (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
  - (e) details of the relevant adult's place of residence, and of any former places of residence which are relevant to the dispute;

- (f) where the person to whom the dispute relates is a carer, details of the place of residence of the adult needing care, and of any former places of residence that are relevant to the dispute;
  - (g) in a case where the relevant adult's capacity to decide where to live is relevant to the dispute, either—
    - (i) a statement that the authorities agree that the adult has, or lacks, such capacity; or
    - (ii) information which appears to any of the authorities to be relevant to the question of whether the adult has, or lacks, such capacity;
  - (h) a statement as to any other steps taken by the authorities in relation to the relevant adult or carer 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 a local 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 the request is made must comply without delay.
- (6) This regulation does not apply in a case to which regulation 5 or 6 applies.

#### **Referral: disputes about co-operation under section 48 (temporary duty)**

- 5.—(1) This regulation applies to a dispute which is solely about the application of section 48(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 a local 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 the request is made must comply without delay.

#### **Referral: disputes about costs incurred under section 48 (temporary duty)**

**6.**—(1) This regulation applies to a dispute which is solely about the application of section 48(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 adult or carer to whom the dispute relates from the beginning of the period to which the dispute relates;
- (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
- (e) information about the costs being sought to be recovered, including a breakdown of those costs;
- (f) details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (g) 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 a local 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 the request is made must comply without delay.

#### **Substituted determinations**

**7.** Where—

- (a) a review of a determination has been carried out under section 40(2) of the Act 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.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed by authority of the Secretary of State for Health.

6th October 2014

*Dan Poulter*  
Parliamentary Under-Secretary of State,  
Department of Health

## EXPLANATORY NOTE

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

These Regulations set out the procedures to be followed when disputes arise between local authorities regarding a person's ordinary residence under Part 1 of the Care Act 2014, or about the application of sections 37 (continuity of care and support – notification and assessment) or 48 (provider failure – temporary duty on local authority) of that Act. By virtue of section 117(4)(a) of the Mental Health Act 1983<sup>(5)</sup>, the procedures applying to disputes regarding a person's ordinary residence under Part 1 of the Care Act 2014 also apply to disputes between local authorities about a person's ordinary residence for the purposes of section 117 of the Mental Health Act.

Regulation 2 sets out which 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 Secretary of State under section 40 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 solely under section 48 of the Act. Regulation 7 provides for reimbursement between authorities when the effect of a revised determination is that sums paid under a previous determination were not owed.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

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<sup>(5)</sup> 1983 c.20; subsection (4) is inserted by section 75(4) of the Care Act 2014.