



# Care Act 2014

## 2014 CHAPTER 23

### PART 1

#### CARE AND SUPPORT

*Establishing where a person lives, etc.*

#### **39 Where a person's ordinary residence is**

- (1) Where 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 regulations, and the adult is living in accommodation in England of a type so specified, the adult is to be treated for the purposes of this Part as ordinarily resident—
  - (a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of a type specified in the regulations, or
  - (b) if the adult was of no settled residence immediately before the adult began to live in accommodation of a type so specified, in the area in which the adult was present at that time.
- (2) Where, before beginning to live in his or her current accommodation, the adult was living in accommodation of a type so specified (whether or not of the same type as the current accommodation), the reference in subsection (1)(a) to when the adult began to live in accommodation of a type so specified is a reference to the beginning of the period during which the adult has been living in accommodation of one or more of the specified types for consecutive periods.
- (3) The regulations may make provision for determining for the purposes of subsection (1) whether 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.
- (4) An adult who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Part as ordinarily resident in the area of the local authority in England or the local authority in Wales

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*Status: This is the original version (as it was originally enacted).*

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on which the duty to provide the adult with services under that section is imposed; and for that purpose—

- (a) “local authority in England” means a local authority for the purposes of this Part, and
  - (b) “local authority in Wales” means a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014.
- (5) An adult who is being provided with NHS accommodation is to be treated for the purposes of this Part as ordinarily resident—
- (a) in the area in which the adult was ordinarily resident immediately before the accommodation was provided, or
  - (b) if the adult was of no settled residence immediately before the accommodation was provided, in the area in which the adult was present at that time.
- (6) “NHS accommodation” means accommodation under—
- (a) the National Health Service Act 2006,
  - (b) the National Health Service (Wales) Act 2006,
  - (c) the National Health Service (Scotland) Act 1978, or
  - (d) Article 5(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.
- (7) The reference in subsection (1) to this Part does not include a reference to section 28 (independent personal budget).
- (8) Schedule 1 (which makes provision about cross-border placements to and from Wales, Scotland or Northern Ireland) has effect.

#### **40 Disputes about ordinary residence or continuity of care**

- (1) Any dispute about where an adult is ordinarily resident for the purposes of this Part, or any dispute between local authorities under section 37 about the application of that section, is to be determined by—
- (a) the Secretary of State, or
  - (b) where the Secretary of State appoints a person for that purpose (the “appointed person”), that person.
- (2) The Secretary of State or appointed person may review a determination under subsection (1), provided that the review begins within 3 months of the date of the determination.
- (3) Having carried out a review under subsection (2), the Secretary of State or appointed person must—
- (a) confirm the original determination, or
  - (b) substitute a different determination.
- (4) Regulations may make further provision about resolution of disputes of the type mentioned in subsection (1); the regulations may, for example, include—
- (a) provision for ensuring that care and support is provided to the adult while the dispute is unresolved;
  - (b) provision requiring the local authorities in dispute to take specified steps before referring the dispute to the Secretary of State or (as the case may be) the appointed person;

- (c) provision about the procedure for referring the dispute to the Secretary of State or appointed person;
- (d) where a review of a determination has been carried out under subsection (2) and a different determination substituted, provision requiring a local authority to take specified steps (including paying specified amounts) in relation to the period before the determination was substituted.

#### **41 Financial adjustments between local authorities**

- (1) This section applies where—
  - (a) a local authority has been meeting an adult’s needs for care and support, but
  - (b) it transpires (whether following the determination of a dispute under section 40 or otherwise) that the adult was, for some or all of the time that the authority has been meeting the adult’s needs, ordinarily resident in the area of another local authority.
- (2) This section also applies where—
  - (a) a local authority has been meeting a carer’s needs for support, but
  - (b) it transpires (whether following the determination of a dispute under section 40 or otherwise) that the adult needing care was, for some or all of the time that the authority has been meeting the carer’s needs, ordinarily resident in the area of another local authority.
- (3) The local authority concerned may recover from the other local authority the amount of any payments it made towards meeting the needs in question at a time when the other local authority was instead liable to meet them under section 18 or 20(1) (as the case may be).
- (4) Subsection (3) does not apply to payments which are the subject of a deferred payment agreement entered into by the local authority in question, unless it agrees with the other local authority to assign its rights and obligations under the deferred payment agreement to that other authority.
- (5) Any period during which a local authority was meeting the needs in question under section 19 or 20(6) is to be disregarded for the purposes of this section.