

2015 No. (W.)

SOCIAL CARE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Order)

Section 195 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) provides for the determination of disputes about where a person is ordinary resident in Wales for the purposes of the Act and of disputes between local authorities about the application of section 56 of the Act (portability of care and support). Disputes about the application of section 189 (provider failure: temporary duty on local authority) are also to be determined under section 195.

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 disputes between local authorities in Wales regarding a person’s ordinary residence for the purposes of section 117(3) of the Mental Health Act 1983 (after care).

Regulation 2 sets out which authority is responsible for meeting a person’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 authorities when the effect of a revised determination following a review is that sums paid under a previous determination were not owed.

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Made ***

Laid before the National Assembly for Wales

Coming into force ***

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 xxxx and apply to Wales.

(3) In these Regulations—

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

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

“authority” means local authority(2);

“dispute” 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

(1) 2014 anaw 4

(2) *see* section 197(1) for the meaning of “local authority”

(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” means, in relation to a dispute, the 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) is required to do so by regulation 2(3);

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

“relevant person” means the person to whom the dispute relates.

(4) References in these Regulations to the date on which a dispute arose are references to the first date on which a written communication is sent by one of the authorities who are parties to the dispute (“the first authority”) to another of those 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 who are parties to a dispute 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 who are parties to a dispute (“the authorities”) must not allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of—

- (a) the relevant person, or

- (b) the relevant person’s carer (if the dispute relates to meeting the needs of a carer of the relevant person).

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

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

- (a) the authority in whose area the relevant person is living, or
- (b) if the relevant person is not living in the area of any authority, the authority in whose area the relevant person is present

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

(4) If the duty under paragraph (3) falls to be discharged by an authority ("A") which is not one of the authorities already a party to the dispute—

- (a) those authorities must, without delay, bring to A's attention—
 - (i) A's duty under that paragraph, and
 - (ii) 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 who are parties to the dispute ("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 authority which is the lead authority in relation to the dispute must seek to identify all the 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 relevant person ,
 - (b) the relevant person’s carer (if the dispute relates to meeting the needs of a carer of the relevant person), and
 - (c) a representative of the relevant person or the relevant person’s 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 authority.

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 relevant person from the beginning of the period to which the dispute relates or the relevant person's carer's needs if the dispute relates to meeting the needs of a carer of the relevant person ,
- (d) 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,
- (e) details of the relevant person's place of residence, and of any former places of residence which are relevant to the dispute,
- (f) 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,
- (g) a statement as to any other steps taken by the authorities in relation to the relevant person or the relevant person's carer , and which may be relevant to the dispute,
- (h) details of the steps that the authorities have taken to resolve the dispute between themselves, and
- (i) 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 authority that it has done so.

(5) If the appropriate authority asks any of the authorities to provide further information, the 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 authority that it has done so.

(6) If the appropriate authority asks any of the authorities to provide further information, the 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 relevant person from the beginning of the period to which the dispute relates, or the relevant person's carer's needs if the dispute relates to meeting the needs of a carer of the relevant person,
 - (d) 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,
 - (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 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 authority that it has done so.
- (6) If the appropriate authority asks any of the authorities to provide further information, the 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 an authority (“A”) has paid an amount to another 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 that sum to A.

Mark Drakeford

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

Date