

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part 5 – Miscellaneous

Ordinary residence for certain purposes of National Assistance Act 1948 etc.

62. The National Assistance Act 1948 gives local authorities statutory responsibilities in respect of persons over 18 for the provision of accommodation to those who are in need of care and attention which is not otherwise available. It also gives them responsibility for making welfare arrangements for specified people. The provision of accommodation and care packages is generally funded by the authority in which an individual is “ordinarily resident”, which is usually where a person lives.
63. Under section 24(6) of the National Assistance Act 1948, if an individual is admitted to an NHS hospital they will be deemed to be ordinarily resident in the area in which they were living immediately before being admitted as a patient to the NHS hospital. This is regardless of whether or not they in fact continue to be ordinarily resident in that area. This is referred to as the “deeming provision”. In recent years the NHS has increasingly accommodated patients in places other than NHS hospitals. The statutory rules governing how local authorities establish the person’s ordinary residence, when providing social care services, after the patient leaves these non-NHS settings are therefore out of step with the way NHS services are provided.
64. Disputes about where an individual is ordinarily resident arise between local authorities when, for example, an individual has lived in different areas whilst receiving care or moves to a different area to receive the care needed. Section 32(3) of the National Assistance Act 1948 originally provided that all disputes between local authorities as to the ordinary residence of a person were to be determined by the Secretary of State. As a result of the transfer of functions following Welsh devolution, the Secretary of State remains responsible for determinations in relation to disputes between English local authorities while the Welsh Ministers make determinations in relation to disputes between Welsh local authorities. This Act puts a mechanism in place to allow for the determination of disputes between English and Welsh local authorities.
65. The Chronically Sick and Disabled Persons Act 1970 does not state explicitly whom local authorities should approach to resolve ordinary residence disputes under section 2 of that Act. This Act makes provision to fill this gap.
66. In summary, section 147 makes provision about a number of discrete matters, which include:
 - the extension of the deeming provision in section 24(6) National Assistance Act 1948;
 - a mechanism for resolving ordinary residence disputes between English and Welsh local authorities; and

*These notes refer to the Health and Social Care Act 2008
(c.14) which received Royal Assent on 21 July 2008*

- provision for ordinary residence disputes under section 2 of the Chronically Sick and Disabled Persons Act 1970 to be determined by the Secretary of State for Health or by the Welsh Ministers (in accordance with arrangements made and published under the National Assistance Act 1948).