

1974 No. 273

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Social Services and Food and Drugs)

Order 1974

Made - - - - - 21st February 1974

Laid before Parliament 7th March 1974

Coming into Operation 1st April 1974

The Secretary of State for Social Services in relation to England, and the Secretary of State for Wales in relation to Wales, in exercise of their powers under section 254(1) and (2) of the Local Government Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following order:—

Citation, commencement and application

1.—(1) This order may be cited as the Local Authorities (Social Services and Food and Drugs) Order 1974, and shall come into operation on 1st April 1974.

(2) This order shall not apply to Greater London.

Interpretation

2.—(1) In this order unless the context otherwise requires:—

“the Act” means the Local Government Act 1972;

“the Act of 1948” means the National Assistance Act 1948(b);

“the Act of 1968” means the Health Services and Public Health Act 1968(c);

“Wales” means the area consisting of the counties established by section 20 of the Act (new local government areas in Wales), and “England” does not include any area in any of those counties;

“dissolved authority” means any local authority dissolved by section 1(10) or 20(6) of the Act, and includes a joint board abolished by section 14 of the National Health Service Reorganisation Act 1973(d);

“successor authority” means in relation to England the council of a non-metropolitan county or a metropolitan district, in relation to Wales the council of a county, and in relation to England and Wales for purposes of the Food and Drugs Act 1955(e), the council of a district or a food and drugs authority as defined in section 198(2) of the Act;

“the Property Orders” means the Local Authorities (England) (Property etc.) Order 1973(f) and the Local Authorities (Wales) (Property etc.) Order 1973(g);

(a) 1972 c. 70.

(c) 1968 c. 46.

(e) 4 & 5 Eliz. 2, c. 16.

(g) S.I. 1973/1863 (1973 III, p. 6452).

(b) 1948 c. 29.

(d) 1973 c. 32.

(f) S.I. 1973/1861 (1973 III, p. 6401).

“non-metropolitan county or metropolitan district of his former place of residence” means in relation to any person the non-metropolitan county or metropolitan district or in Wales, the county in which on the specified date is situated the place at which he was, or is deemed to have been ordinarily resident immediately prior to his admission to accommodation provided under Part III of the Act of 1948, or, as the case may be, at the time when services under section 29 of that Act, or under section 45 of the Act of 1968 were provided for him;

“guardianship application” and “guardianship order” have the same meanings as in the Mental Health Act 1959(a).

(2) In this order, unless the context otherwise requires, references to an enactment shall be construed as references to that enactment as amended extended or applied by or under any other enactment.

(3) The Interpretation Act 1889(b) shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament.

Mental Health

3.—(1) Where immediately before 1st April 1974 a patient is in the guardianship under the Mental Health Act 1959 of a dissolved authority his guardianship shall vest on that date—

(a) if the place where he resided immediately before he was received into guardianship is, on that date, in the area of a successor authority, in that successor authority, or

(b) if the place where he resided immediately before he was received into guardianship cannot with reasonable diligence be ascertained, or is disputed, in such successor authority as may be designated for the purpose by the authority in whom his guardianship was vested immediately prior to 1st April 1974.

(2) Where the guardianship of a patient who is subject to guardianship by virtue of a guardianship application becomes vested in a successor authority in pursuance of paragraph (1) of this article, the provisions of Part IV of the Mental Health Act 1959 shall apply to him as if the application for his reception into guardianship were for his reception into the guardianship of that authority and had been accepted at the time when it was originally accepted.

(3) Where the guardianship of a patient who is subject to guardianship by virtue of a guardianship order becomes vested in a successor authority in pursuance of paragraph (1) of this article, the provisions of Part IV of the Mental Health Act 1959 shall apply to him as if the order by virtue of which he is subject to guardianship were an order placing him under the guardianship of the authority in which his guardianship has become vested.

(4) A patient who is in hospital at the time when his age falls to be determined for the purposes of regulation 26 of the Mental Health (Hospital and Guardianship) Regulations 1960(c) and who before the date of his admission to hospital resided in the area of a dissolved authority, shall be deemed to have resided at that date in the area of the successor authority in which on 1st April 1974 his former place of residence is situated.

(5) Any order made by a county court under section 52 of the Mental Health

(a) 1959 c. 72.

(b) 1889 c. 63.

(c) 1960/1241 (1960 II, p. 1903).

Act 1959 directing that the functions under Part IV of that Act of the nearest relative of a patient shall be exercisable by a dissolved authority shall have effect on and after 1st April 1974 as if that order had directed those functions to be exercised by the successor authority in whose area the patient resided on that date, or, if he is then in hospital, the successor authority in whose area on that date the place at which he was resident immediately before he was admitted to hospital is situated.

(6) Anything duly done before 1st April 1974 by or in relation to a local health authority, a local authority social services committee, or a mental welfare officer for the purposes of any provision of the Mental Health Act 1959 with respect to any person, shall not be affected by the Act, but may be continued thereafter by or in relation to the successor authority or mental welfare officer concerned to carry out that provision of the Mental Health Act 1959 in respect of that person.

National Assistance

4.—(1) Where immediately before 1st April 1974 any expenditure is recoverable under section 32(1) or section 47(9) of the Act of 1948 in respect of any person who was, or is deemed to have been, ordinarily resident in the area of a dissolved authority, that person shall on and after 1st April 1974 be deemed to be ordinarily resident in the non-metropolitan county or metropolitan district or in Wales the county of his former place of residence.

(2) For the purposes of section 32(1) or section 47(9) of the Act of 1948 any person (other than a person to whom paragraph (1) of this Article applies) residing immediately before 1st April 1974 in accommodation provided under Part III of the Act of 1948 by any dissolved authority, or for whom services under section 29 of that Act or under section 45 of the Act of 1968 are then being provided by any such authority, shall on and after that date be deemed to be ordinarily resident in the non-metropolitan county or metropolitan district or in Wales the county of his former place of residence.

(3) Where any person in hospital on 1st April 1974 subsequently enters accommodation provided under Part III of the Act of 1948 in circumstances in which he would but for the Act be deemed to be ordinarily resident in the area of any dissolved authority, he shall be deemed to be ordinarily resident in the non-metropolitan county or metropolitan district or in Wales the county in which on 1st April 1974 is situated the place at which he was ordinarily resident immediately prior to his admission to hospital.

(4) Any local authority by whom any sum is recoverable under section 32(1) or section 47(9) of the Act of 1948 in consequence of this order may agree with any local authority from whom the sum is recoverable to forego recovery of the sum.

(5) Any question arising under paragraph (1), (2) or (3) of this Article as to the ordinary residence of any person shall be determined by the Secretary of State.

(6) Any order in force under section 47 of the Act of 1948, immediately before 1st April 1974 authorising the detention of any person in accommodation provided under Part III of that Act and directed to an officer of any dissolved authority, shall not be affected by any transfer under the Property Orders of the premises in which the person is detained, but, subject to any further order of the court, shall continue to have effect as if the order had been directed to the appropriate officer of the authority to whom the premises are transferred.

Food and Drugs

5. Anything duly done before 1st April 1974 by, to, or in relation to any dissolved authority or authorised officer of such authority in the exercise of any function under the Food and Drugs Act 1955 or any statutory or other instrument having effect thereunder, shall be deemed as from that date to have been duly done by, to, or in relation to the successor authority by whom the function has become exercisable by virtue of sections 198(2) and 199(5) of the Act or, as the case may be, an authorised officer of such authority, and any instrument in force immediately before that date, if and so far as it was made in the exercise of any such function, shall continue in force after that date until varied or revoked in the exercise of that function by the successor authority.

Keith Joseph,

Secretary of State for Social Services.

18th February 1974.

Peter Thomas,

Secretary of State for Wales.

21st February 1974.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes transitional provision to ensure continuity of administration when local authorities are reorganised by the Local Government Act 1972. In particular the order provides for the exercise by the appropriate successor authorities of functions of guardianship under the Mental Health Act 1959, transfers liabilities to pay the cost of accommodation or social services provided under Part III of the National Assistance Act 1948, or section 45 of the Health Services and Public Health Act 1968 and provides for deeming anything done by dissolved authorities in exercise of their functions under the Food and Drugs Act 1955 or their officers to have been done by the successor authorities or their officers.

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