



Department
of Health



Llywodraeth Cymru
Welsh Government

Mental health aftercare in England and Wales

Arrangements for resolving disputes over ordinary
residence involving local authorities in England and
Wales

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Mental health after-care in England and Wales

Arrangements for resolving disputes over ordinary residence involving local authorities in England and Wales

Prepared by **Department of Health and the Welsh Government**

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The arrangements

Arrangements under section 117(5) of the Mental Health Act 1983 between the Secretary of State and the Welsh Ministers

Background

1. Section 117 of the Mental Health Act 1983 (“the 1983 Act”) provides for local social services authorities in England and Wales, jointly with the relevant health body, to provide after care services to certain people who have been detained under the 1983 Act and then cease to be detained and leave hospital.

2. Section 117(3) of the 1983 Act (as amended by section 75(3) of the Care Act 2014) makes provision for which local authority is to be responsible for providing such mental health after care services in individual cases:

- If, immediately before being detained, the person concerned was ordinarily resident in England, the responsible local authority will be the authority for the area in England in which the person was ordinarily resident.
- If, immediately before being detained, the person concerned was ordinarily resident in Wales, the responsible local authority will be the authority for the area in Wales in which the person was ordinarily resident.
- In any other case (for example, if the person has no settled residence) the responsible local authority will be the authority for the area in which the person concerned is resident or to which he is sent on discharge by the hospital to which he is detained.

3. Section 117(4) of the 1983 Act (inserted by section 75(4) of the Care Act 2014) sets out the arrangements for determining disputes about where a person was ordinarily resident for the purposes of section 117(3):

- If the dispute is between local authorities in England, section 40 of the Care Act applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act.
- If the dispute is between local authorities in Wales, section 194 of the Social Services and Well-being (Wales) Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that act. (NB Until section 194 is commenced (expected to be in April 2016), transitional legislation will provide that the dispute will be determined by the Welsh Ministers)
- If the dispute is between a local authority in England and a local authority in Wales, the dispute is to be determined by the Secretary of State or the Welsh Ministers

4. Section 117(5) of the 1983 Act (also inserted by section 74(4) of the Care Act 2014) requires the Secretary of State and the Welsh Ministers to make and publish arrangements for determining which of them is to determine a dispute where the dispute is between a local authority in England and a local authority in Wales. These arrangements may provide for the dispute to be determined by whichever of them they agree is to do so.

Arrangements

The Secretary of State and the Welsh Ministers make the following arrangements under section 117(5) of the Mental Health Act 1983.

1. In these arrangements –

“dispute” means a dispute between at least one local authority in England and at least one local authority in Wales about where a person was ordinarily resident for the purposes of section 117(3) of the 1983 Act; “the 1983 Act” means the Mental Health Act 1983;

“the lead authority” is the local authority in whose area the person to whom the dispute relates was living immediately before being detained under the 1983 Act.

2. The Secretary of State will determine the dispute if the lead authority is in England.
3. The Welsh Ministers will determine the dispute if the lead authority is in Wales.
4. If there is a dispute as to where the person was living immediately before being detained under the 1983 Act, , the Secretary of State and the Welsh Ministers will agree between themselves who will determine the dispute.
5. The Secretary of State and Welsh Ministers (each referred to in this paragraph as a “responsible Minister”) agree that each will –
 - a. notify the other responsible Minister immediately on being made aware of the dispute;
 - b. agree in accordance with these arrangements which responsible Minister will determine the dispute, as soon as it is known where the person to whom the dispute relates was living immediately before being detained under the 1983 Act;
 - c. consult the other responsible Minister and take their views into account, prior to determining the dispute; and
 - d. notify the other responsible Minister of the outcome of the determination, prior to notifying the local authorities which are parties to the dispute.
6. These arrangements have effect from 1 April 2015.

Norman Lamb

Mark Drakeford

Minister of State
for Care Services

Minister for Health and Social Services

Date: March 2015

Date: March 2015

Contact details

Where the dispute is to be referred to the Secretary of State, local authorities should contact:"

Department of Health Quality and Safety Team
Social Care Policy Division
Area 313B Richmond House
79 Whitehall
London
SW1A 2NS

Where the dispute is to be referred to the Welsh Ministers, local authorities should contact:

Mental Health & Vulnerable Groups Division
Health and Social Services Directorate General
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ
MentalHealthandVulnerableGroups@Wales.GSI.Gov.UK