

Explanatory Memorandum to The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015.

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

7 July 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 194(1) of the Act deals with where an adult is to be treated as ordinarily resident if the local authority which is responsible for meeting that adult’s care and support makes arrangements for the adult to live in accommodation of a particular type, to be specified in regulations. As a consequence of these arrangements, the adult may move to another area. In this situation, the effect of this provision is that the adult will be treated, for the purposes of this Act, as being ordinarily resident in the area of the local authority which made the arrangements (and not in the area to which they move). The regulations provide that, for the purposes of section 194(1), care home accommodation is accommodation of a specified type.

These provisions only apply to adults with care and support needs who are living in such accommodation in Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these regulations to be made are contained within Part 11, section 194(1) of the Social Services and Well-being (Wales) Act 2014.

This statutory instrument is subject to annulment in pursuance of a resolution in the National Assembly for Wales (**the negative procedure**).

The regulations will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to establish an adult’s ordinary residence where that adult is living in accommodation of a specified type. The Regulations provide that care home accommodation is accommodation of a specified type for the purposes of section 194(1) of the Act.

The intended effect of these Regulations is to ensure that where an adult is accommodated in care home accommodation, and the adult has care and support

needs which can only be met by living in this kind of accommodation, that adult is treated as ordinarily resident in the local authority area where the adult was ordinarily resident before moving into the care home. The purpose of the regulations is therefore to maintain the status quo.

The specific policy intention behind the Regulations is to clarify which local authority has responsibility for meeting the care and support needs of an adult who has been placed in a care home in another local authority area – i.e. that responsibility continues to rest with the ‘placing’ authority rather than the authority in whose area the care home is situated.

As set out in the legislative background, these Regulations are made under section 194 of the Act which replaces section 24 of the National Assistance Act 1948 (“the 1948 Act”) upon which the current legislative framework is based.

Section 24(5) of the 1948 Act provides that where a person is provided with residential accommodation under Part III of that 1948 Act, a person is deemed to continue to be ordinarily resident in the area in which they were ordinarily resident immediately before the residential accommodation was provided. This means that where a person is placed by a local authority in residential accommodation in the area of another local authority, the person is deemed to be ordinarily resident in the area of the placing authority and the placing authority therefore continues to have responsibility for the provision of the accommodation.

The existing guidance, is WOC 41/93, ‘Ordinary Residence – Personal Social Services’, which assists local authorities to identify when an individual is ordinarily resident in their area for the purpose of providing personal social services and (when required) residential accommodation under the 1948 Act. This was issued under section 7 of the Local Authority Social Services Act 1970 (LASSA). Section 7 guidance will be repealed in April 2016 when the Social Services and Well-being (Wales) Act 2014 comes into force and will be replaced by the Code of Practice under the Act.

Section 194 of the Act replaces section 24 of the National Assistance Act 1948. The code of practice relating to Part 11 will replace the existing guidance WOC 41/93, ‘Ordinary Residence – Personal Social Services’.

These Regulations will maintain the status quo, in that adults whose care and support needs are met through the provision of care home accommodation will be treated as ordinarily resident in the local authority area in which they were living immediately before they moved into the accommodation.

5. Consultation

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The Report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/part11/?status=closed&lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment explores the options and costings associated with specifying particular types of accommodation specified by the Regulations.

Three options were considered:

Option 1 – do nothing

Option 2 – specifying only care home accommodation

Option 3 – extending the specified accommodation to include adult placements (shared lives)

Option 1 – do nothing

Section 194(1) of the Act includes a regulation making power for the Welsh Ministers to specify the type of accommodation to which section 194(1) applies. If no regulations were made, then section 194(1) of the Act would have no application (as section 24 of the 1948 Act will have been repealed). Doing nothing is not an option.

Option 2 – maintaining the status quo by specifying only care home accommodation

This is the preferred option. Under this option, the Regulations would specify only care home accommodation. This would in effect maintain the status quo, as provided for by section 24 of the 1948 Act (see above). Adults whose care and support needs can only be met by living in care home accommodation would be deemed to be ordinarily resident in the local authority area where they were living immediately before moving into the care home, regardless of where that care home was situated.

Option 3 – extending the specified accommodation to include adult placements (shared lives)

Under this option, the specified accommodation would also include other types of accommodation which meets an adult's care and support needs. In particular, consideration was given to including adult placements (commonly known as shared lives schemes) as defined under the Care Standards Act 2000. The effect would be that an adult whose care and support needs can only be met through an adult placement would continue to be treated as ordinarily resident in the local authority area where they were living immediately before they moved into the adult placement, regardless of where that adult placement was located.

Consideration was also given to including supported living arrangements, although this was discounted at an early stage for the reasons given under the costs section below.

Costs

Option 1 – Do nothing

The ordinary residence of a person in a care home, and therefore the responsibility of providing this care, would rest with the authority in which the home is located. It could be argued that this would create an incentive for local authorities to therefore place people out of area, which could potentially lead to more disputes between local authorities.

Option 2 – maintaining the status quo by specifying only care home accommodation

The effect of these Regulations would be to clarify which local authority has ongoing responsibility for meeting the care and support needs of an adult living in care home accommodation (where that adult has been placed in such accommodation because his or her care and support needs can only be met in that way). This would include responsibility for meeting the cost of that accommodation and of any other assessed care and support needs. The costs to local government would arise as a result of the process for assessing and meeting care and support needs as set out in Parts 3 and 4 of the Act ('Assessing the Needs of Individuals' and 'Meeting Needs'), subject to the charging and financial assessment regime established under Part 5 of the Act. These Regulations would simply aid the allocation of these costs between local authorities, in the same way as is done presently. It does not affect the actual costs themselves.

Option 3 – extending the specified accommodation to include adult placements (shared lives)

Adult Placements (shared lives)

Adults who live in adult placements (except for short breaks) are tenants and as such may be eligible for housing benefit. This would be administered by the local authority in which the adult placement is located, even if the adult were treated as ordinarily resident in another local authority area in respect of care and support. In these circumstances, the adult has to all intents and purposes moved home, and it would not make sense for their care and support needs to be met by their former local authority.

Clarifying which of the two local authorities (the one which carried out the care and support assessment, or the one in which the adult placement is located) would be responsible for meeting the costs of such a placement through extending the specified accommodation provisions to include adult placements, will not have an impact on the actual costs of providing adult placement accommodation, or on the housing benefit regime.

There are no known cases of ordinary residence disputes between local authorities in Wales in respect of adult placements. In some parts of Wales (e.g. South East Wales), local authorities provide shared lives services on a regional basis, minimising even more the potential for disputes when an adult moves into an adult placement outside the area where they have been living.

Supported living

The considerations above in respect of adult placement also apply to supported living accommodation. Adults who move into supported living accommodation (because their care and support needs can only be met by living in such accommodation) become tenants and have to all intents and purposes moved house. Including this accommodation within the specified accommodation for ordinary residence would mean that they were treated differently to other adults who have chosen to move house for whatever reason.

Benefits

Option 1 – Do nothing

There are no foreseeable benefits to this option. Doing nothing would frustrate the clear policy intention behind the current and new legislation.

Option 2 - maintaining the status quo by specifying only care home accommodation

The main benefit of these Regulations would be to clarify which local authority would have responsibility for meeting an adult's care and support needs, when the adult is placed in care home accommodation. This should reduce the potential for disputes between local authorities where an adult is placed in care home accommodation in another local authority area.

Option 3 - extending the specified accommodation to include adult placements (shared lives)

The benefit of including adult placements (shared lives) within the specified accommodation would be to clarify which local authority is responsible for meeting the care and support needs of an adult who enters into an adult placement as a result of care and support needs which can only be met by living in such an arrangement. However, the current situation (whereby adult placements are not included within the specified accommodation) is also clear – i.e. responsibility (except for short breaks) for meeting the adult's care and support needs is with the authority for the area in which the adult is ordinarily resident, which will be where the accommodation is situated. There would be no obvious benefit in including adult placements in the regulations. Indeed, as has been stated above, it would potentially mean that in some cases different authorities would be responsible for meeting care and support costs and housing costs.

Consultation

A twelve week public consultation on these regulations and accompanying Code of Practice ran between 6 November 2014 and 2 February 2015. The documents can be found at: <http://gov.wales/consultations/healthsocialcare/part11/?status=closed&lang=en>

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

We have not identified any specific impacts on competition. The proposals in the Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015, relate in the main to responsibilities of local authorities and do not effect the business sector in any significant way.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these Regulations.

The Welsh Government will continue to monitor the impact of the regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child and Older People and Equality.