

Part 11 - Code of Practice on the exercise of social services functions in relation to part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act,

including Adults and Children in prison, youth detention accommodation and bail accommodation, and Ordinary Residence

Issued under Section 145 of the Social Services and Well-being (Wales) Act 2014

(Short title : *Code of Practice on Miscellaneous and General*)

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Preamble

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (The Act).

The Social Services and Well-Being (Wales) Bill received royal assent on 1 May 2014 to become an Act of the National Assembly of Wales. The Act comes into effect on 06 April 2016.

Local authorities, when exercising their social services functions, must act in accordance with the **requirements** contained in this code. Section 147 (Departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities must have regard to any **guidelines** set out here.

In this code and statutory guidance, a **requirement** is expressed as “must” or “must not”. **Guidelines** are expressed as “may” or “should/should not”.

Part 11 of the Act – miscellaneous and general, contains a range of provision, including the ability of the Welsh Ministers to make regulations which are ancillary to the operation of the Act. Sections 194 and 195 allow regulations to be made about ordinary residence and disputes about ordinary residence and portability of care and support, whilst sections 185 to 188 make provision in

relation to adults in prison, approved premises and bail accommodation and young people in youth detention accommodation.

The Welsh Government has sought to support implementation through a process that fully engages our stakeholders. Central to this approach has been the establishment of technical groups made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the detailed policy necessary to develop the regulations and code of practice which in turn will deliver the policy aspirations underpinning the Act. Chapter 1 of this code is one of the outcomes of that exercise of co-production.

Chapter 1: ADULTS IN PRISON, APPROVED PREMISES AND BAIL ACCOMMODATION AND YOUNG PEOPLE IN YOUTH DETENTION ACCOMMODATION

Introduction

Aim and scope

This chapter of the code of practice sets out the duties under the Social Services and Well-being (Wales) Act 2014 on local authorities in relation to care and support for:

- ❖ adults in prisons, approved premises or bail accommodation in Wales (including those aged over 18 in youth detention accommodation), and
- ❖ children in youth detention accommodation or bail accommodation in England and Wales.

This chapter covers:

- Definitions
- Exclusions
- Provisions for adults, 18 years of age and over, in prison, approved premises and bail accommodation in Wales
- Provisions for adults, 18 years of age and over, in prison, approved premises and bail accommodation in England
- Children in youth detention accommodation in England and Wales
- Transition to adulthood
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A key partner in enabling the delivery of this code of practice will be the National Offender Management Service (NOMS). NOMS is an executive agency of the Ministry of Justice and responsible on behalf of the Secretary of State for Justice for commissioning and delivering prison and probation services in England and Wales. NOMS in Wales is a Directorate of NOMS and has responsibility for:

- all prisons in Wales
- the National Probation Service (NPS) in Wales - which is responsible for risk assessments of all offenders and management of offenders who pose the highest risk of serious harm to the public and those who have committed the most serious offences
- the contract management of the Wales Community Rehabilitation Company (WCRC), which is responsible for delivering community requirements for medium and low risk offenders.

For the purpose of this chapter of the code the use of NOMS in Wales will generically apply to include prisons and probation services in Wales. The term probation services in this code will mean both NPS and WCRC.

This chapter applies to all local authorities in Wales although partner organisations, including local health boards, NOMS in Wales, Youth Justice Board, Youth Offending Teams, NHS Wales and the related services referred to above, third and independent sector organisations, citizens of Wales, and nationals of other countries in prison in Wales will have an interest in its content.

While the duties in sections 185 to 188 of the 2014 Act are on the local authorities, local authorities are expected to co-operate with prison services in Wales and Youth Offending Teams in discharging these duties.

Context and purpose

The Social Services and Well-being (Wales) Act comes into effect on 1 April 2016. When this happens it will bring with it a change in local authorities' responsibilities for adults in prisons in Wales, children and young people in youth detention accommodation, and those in approved premises and bail accommodation.

The 2014 Act covers adults in the secure estate in Wales, and children in the secure estate in England and Wales.

From 1 April 2016, when the Act comes into effect, local authorities will be responsible for assessing and meeting the 'care and support' needs of all adults and children in the secure estate not just upon discharge but while they are in custody:

- section 185 covers adults, who are aged 18 and over, in prisons, approved premises, youth detention accommodation or bail accommodation
- section 186 covers children in youth detention accommodation, prison or bail accommodation.

The Act has been drafted in an inclusive way so that provisions within the Act apply in full to all adults and children in the secure estate with the exception of four provisions which are covered in section 187:

- section 187 sets out the provisions in the Act that are dis-applied to adults and children in prison, approved premises, youth detention accommodation or bail accommodation etc.
- section 188 covers interpretation of sections 185 – 187.

This code of practice has been developed by Welsh Government. It underpins the Act and sets out the requirements on local authorities in the exercise of their social services functions in respect of those being held in custody, in Approved Premises or Bail Accommodation and on release.

Terms and Definitions

In terms of this code of practice the term ‘the 2014 Act’ is used throughout to mean the Social Services and Well-being (Wales) Act.

In terms of this code of practice the term ‘children’ is used throughout to mean children and young people under the age of 18 years.

In terms of this code the term ‘secure estate’ is used throughout to mean prison, approved premises, youth detention accommodation or bail accommodation as defined in the 2014 Act.

In terms of this code the term ‘local’ in the description of a prison is used throughout to mean a prison that serves the courts in its catchment area and will hold those on remand.

Prison has the same meaning as in the Prison Act 1952 – Section 53(1)
<http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52/contents>

The prison where an individual is located is a matter for the Ministry of Justice.

Approved premises has the same meaning as in the Offender Management Act 2007 – section 13. In Wales they are supervised hostel-type accommodation for the supervision and rehabilitation of offenders.
<http://www.legislation.gov.uk/ukpga/2007/21/contents>

Bail in criminal proceedings has the same meaning as in the Bail Act 1976 – section 1

<http://www.legislation.gov.uk/ukpga/1976/63/contents>

Under Sections 185 and 186 a local authority would be responsible for persons detained in prison, youth detention accommodation, approved premises and bail accommodation, regardless of their ordinary residence, including foreign nationals.

Youth detention accommodation means a secure children's home; a secure training centre; children in a youth offending institution; 'accommodation provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children's Act 1989 for the purpose of restricting the liberty of children; accommodation, or accommodation specified by order under section 107(1) (e) of the powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for the purposes of detention and training orders).

<http://www.legislation.gov.uk/ukpga/2000/6/contents>

Her Majesty's Inspectorate of Prisons/Probation is an independent inspectorate covering England and Wales which reports on conditions for and the treatment of those in prison, young offender institutions and immigration detention facilities.

Similarly, HMI Probation reports on the effectiveness of work with adults, children and young people who have offended aimed at reducing re-offending and protecting the public.

Prisons and Probation Ombudsman (PPO) investigates complaints from prisoners, those on probation and those held in immigration removal centres. The PPO also investigates all deaths that occur among prisoners, immigration detainees and the residents of approved premises.

Temporally Absent

In relation to sections 185 -188 the following deeming provisions apply: A person who is temporally absent:

- from prison or youth detention is to be regarded as detained in prison for the period of the absence
- from approved premises is to be regarded as detained in approved premises for the period of the absence
- from other premises, because of a bail in criminal proceedings, is to be regarded as detained in these premises for the period of absence.

'Care leavers' means those young people who leave the 'care of the local authority'. Young people formally leave care at age 18 years but provision under section 104 of the 2014 Act covers provisions for care leavers aged 16, 17,18, 21 and 25 years as appropriate. Care leavers can, therefore, be adults or children depending on their age.

‘Care and Support’ under the 2014 Act is defined as:

- care
- support
- both care and support.

Adults who have care and support needs that meet the eligibility criteria will have a right to a care and support plan managed by the local authority. Carers with support needs that meet the eligibility criteria will have a right to a support plan managed by the local authority.

Exclusions

Those in the secure estate, both adults and children, are deemed to be people under the 2014 Act with the same rights and entitlements as anyone else living in the community with the exception of four elements. Section 187 sets out the exceptions, as follows:

- **Section 187 (1) states that a prisoner cannot be a carer** if they are detained in prison, approved premises or youth detention accommodation after having been convicted of an offense. That is to say they cannot be given the formal status of a carer while they are assisting another prisoner(s) / offender although in practice some assistance between inmates may continue, such as pushing wheelchairs. If this is the case prison staff will need to be mindful of the safeguarding requirements of the 2014 Act, sections 126 - 142, Part 7.

This means that a prisoner cannot receive an assessment as a carer, nor would they be entitled to any additional ‘support’ that a carer who was eligible would be entitled to under the 2014 Act.

- **Section 187 (2) states that a prisoner cannot receive direct payments** towards meeting the cost of their care and support needs if they have been convicted of an offense and are in prison or in youth detention accommodation or in approved premises.

Any prisoner in custody who is eligible for care and support would have that provided directly.

- **Section 187 (3) states that a prisoner cannot express preference for accommodation** while they are detained in prison, youth detention or approved premises.

Prisoners will be able to express a preference for accommodation when they are making plans for their accommodation on release. Section 52 (6) of the Housing (Wales) Act 2014 requires local authorities to develop homelessness strategies and to refer to actions it is taking, or those of its partner organisations, for those who may be in particular need of support if

they are or may become homeless, including those people leaving prison or youth detention accommodation.

- **Section 187 (4) states that a prisoner cannot have their property protected by the local authority while they are in prison, youth detention or approved premises.**

Those prisoners on bail, living in the community unsupervised by Probation would still be able to be a carer, to receive direct payments where applicable, be able to express a preference for their accommodation and to have their property protected in the same way as any other citizen within the authority area.

Provisions for adults, 18 years of age and over, in prison and bail accommodation in Wales

The 2014 Act places duties on local authorities in Wales to support an adult in the secure estate to meet their 'care and support' needs as they would for someone in the community, and to help them towards self support as a potential solution. In the community a local authority is responsible for anyone who can show 'ordinary residence' within their boundary. Having a prison within a local authority's boundary means that the prisoners are deemed to have 'ordinary residence' and the local authority in question is therefore responsible for supporting that individual.

The local authority must consider how it will meet these obligations for the secure estate population as the delivery of 'care and support' arrangements may need to be adjusted to meet the needs of the prison population and the prison regime.

The local authority where the prison is based will, from 1 April 2016, be responsible for meeting the care and support needs of those in custody, as the 2014 Act comes into effect. The following table shows the adult and young person's secure facilities (excluding Hillside Secure Children's Home) in Wales as at 1 September 2014.

Name	Type	Population	Operational Capacity	Local Authority
HMP Cardiff	Local Resettlement	Male prisoners from 18 years of age	814 prisoners*	Cardiff
HMP Swansea	Local Resettlement	Male prisoners	455 prisoners**	Swansea

		from age 18		
HMP Usk	Training prison - Sex Offender Treatment site	Male prisoners from 21 years of age	276 prisoners***	Monmouth
HMP Prescoed	Open Prison	Male prisoners from 18 years of age	250 prisoners****	Monmouth
HMP Parc	Training Resettlement prison & Sex Offender Support Site	Male prisoners from age 18.	1410 prisoners*****	Bridgend
YOI Parc (excluding Hillside)	Young persons' unit	Hold young people up to the age of 17	64 young people	Bridgend

- * Includes additional 10 spaces as a temporary measure
- ** Includes additional 20 spaces as a temporary measure and will increase by a further 59 places permanently from April 2015
- *** Includes additional 3 spaces as a temporary measure
- **** Includes additional 20 Spaces as a temporary measure
- ***** Operational Capacity in HMP Parc will increase to 1723 in Jan 2015

North Wales will have a prison located in the Wrexham local authority area, which will accommodate up to 2,016 prisoners from England and Wales. The first prisoner intake is expected to start in February 2017. Wrexham will have responsibilities for all prisoners in that establishment.

At time of writing there are also four Approved Premises in Wales.

Portability responsibilities

All local authorities in Wales will need to be aware of the impact of offenders leaving prison and settling or resettling in their area. They will have to fulfil the portability responsibilities under the 2014 Act in the same way as for anyone in the community seeking to move into their area from elsewhere in Wales.

All local authorities across Wales must agree an approach to how they will work in partnership with those local authorities which have prisons within their boundaries, and who have hitherto had the responsibility of meeting prisoners' care and support needs while they were in custody. Local authorities may

adopt a national approach to fulfil this task. To help this consideration it will be important for local authorities to understand the role and function of the prisons, the local authority areas within the prisons' catchment area and the main resettlement areas. It would be useful to consider involving NOMS in Wales to help inform those discussions.

Local authorities should inform NOMS/ Welsh Government of the agreed portability arrangements to ensure that all those involved in the offender journey from prison to resettlement are fully aware of arrangements.

In the same way all local authorities should liaise with prison managers when a person who has previously been receiving care and support in the community is sentenced or remanded to custody.

Profile of Needs Assessments

A Prison Mental Health Needs Assessment¹ undertaken by Public Health Wales published in March 2013 estimates that only 8% of the prison population held in Wales, at any given time, do not suffer from any type of diagnosable mental health problem. The majority have one or more presenting difficulty with a range of severity.

Local authorities should consider the profile of high mental health needs and how this might impact on the 'eligibility' criteria that will be operational within Wales – see Part 4, regulations and code of practice for Eligibility.

A report by the Ministry of Justice in 2008², which describes the range of problems experienced by prisoners before the start of their sentence, and the extent to which prisoners felt they needed help and support for these problems during custody, provides further information on the profile of the prison population

A project to profile young people who are prolific offenders (25+ offences) was undertaken by the Youth Justice Board, Cymru Division, supported by the Welsh Government³. This showed that significant numbers of young people involved with social services had no qualifications and had been referred to mental health services. Also of concern was that over a third were or had been placed on the child protection register, had experience of absconding or staying away from home and were identified as having Special Educational Needs.

¹ <http://www.wales.nhs.uk/sitesplus/888/news/27921>

² The problems and needs of newly sentenced prisoners: results from a national survey - Duncan Stewart

Ministry of Justice Research Series 16/08 October 2008

³ Proposals to improve services in Wales to better meet the needs of children and young people who are at risk of entering, or are already in, the Youth Justice System – Annex A

<http://wales.gov.uk/consultations/people-and-communities/gpyouthjustice/?status=closed&lang=en>

Adults in prison, approved premises and bail accommodation in England

The Care Act 2014 places duties on English local authorities to provide 'care and support' for adults in the secure estate within their geographical area. So for those Welsh adults who are accommodated in the secure estate in England, the local authority where they are detained is responsible for meeting their 'care and support' needs.

Cross- border responsibilities

All local authorities in Wales will need to be aware of the impact of offenders leaving prison and settling or resettling in their area. They will have to fulfil the responsibilities under the 2014 Act in the same way as for anyone in the community seeking to move into their area, although portability arrangements do not apply.

All local authorities across Wales must identify how they will work in partnership with those local authorities in England which have prisons and / or approved premises within their boundaries, and who have hitherto had the responsibility of meeting the individuals' care and support needs while they were detained. For reasons of consistency local authorities may adopt a national approach to this task.

Local authorities in Wales will need to be mindful of the differences in eligibility criteria that will be operational within Wales and England – see Part 4, regulations and code of practice for Eligibility.

Children in youth detention accommodation and bail accommodation in England or Wales

The 2014 Act places responsibilities on local authorities to meet the care and support needs of a child, up to 18 years of age accommodated in the secure estate, as they would for any child living within the community, and to help them towards self support as a potential solution. However, with children the local authorities responsibilities are twofold:

For children from Wales in secure accommodation in Wales or in England the responsibility for their 'care and support' needs will be on the 'home' Welsh local authority – that is where they were ordinarily resident prior to being sentenced. The rationale being that this will retain the continuity of care and support arrangements

For children from England in the secure estate in Wales the local authority responsible will differ depending on their past involvement with social services:

- if the child had either no involvement with social services, or had 'children in need' status as defined in section 17 of the Children act

1989, the responsibility will fall to the Welsh local authority in which they are detained

- if the child had either section 20 status (voluntarily accommodated) under section 20 of the 1989 Act or section 31 status (subject to a care order under section 31 of the 1989 Act), then the responsibility will fall to the English local authority in which they were ordinarily resident prior to being sentenced.

Looked After and Accommodated Children

Part 6 of the 2014 Act refers to 'Looked After and Accommodated Children' and sets out the duties on a local authority to these children or young people.

Section 97 of the 2014 Act extends the duties (under the Children's Act 1989, section 23ZA) of a local authority to visit a Looked After Child (LAC) or former LAC to all children in the secure estate.

All local authorities in Wales must be aware of their responsibilities to any LAC or former LAC who may have care and support needs and serve a custodial sentence.

Care Leavers

Under Part 6, section 104 sets out the responsibilities on local authorities for care leavers under the 2014 Act. While children are in the secure estate they are NOT entitled to the care leavers' provisions. However, if they are under 18 years they will be entitled to visits under section 97.

On leaving the secure estate the care leaver provisions MUST be re-established.

Child without place of ordinary residence

Any child without place of ordinary residence would be the responsibility of the local authority where they are detained. In Wales, the local authority would apply duties under Part 4 Section 7 and section 38 to assess the needs of a child.

Families of those in the secure estate

Families in Wales of those in the secure estate will have the right to the Information Advice and Assistance Service provided under section 17 of the Act, to preventative and wellbeing services and to assessment for care and support needs as for any citizen within the local authority area. The local authority where the family members are ordinarily resident would have the responsibility for their care and support needs. Local authorities should consider how they will work with the family of a prisoner to ensure they are kept informed and have access to care and support.

Transition to adulthood while in the secure estate

As soon as a young person in the secure estate turns 18 years of age they are legally regarded as an adult and the local authority within which they are detained is then responsible for their care and support needs, see sections 185 of the 2014 Act.

There is no continuing obligation upon the local authority after the child reaches the age of 18 (unless the authority would be responsible in any event under section 185 because the institution in which the young person is held is within the local authority area).

However, in practice these arrangements need to be reviewed on a case by case basis. Where those responsible for the well-being of the individual believes it will be in the child's best interests to have the existing arrangements remain in place until they leave the young persons' secure accommodation, this may be co-ordinated between the relevant parties.

If the individual had care leaver status, on release from the secure estate they will be entitled to the provisions as a 'care leaver' in accordance with Part 6 of the 2014 Act.

Resettlement

While it is a new duty on local authorities that have prisons within their boundaries to identify those in the secure estate who have or may have care and support needs, to assess them and, where appropriate if eligible, to provide them with care and support, all local authorities in Wales will need to be aware of their duties to meet the needs of those individuals returning to their areas on release.

Even if a prisoner has not been eligible for care and support while serving their sentence, the local authority to which the individual may return on release, may have a general duty to consider the individual's needs and to offer information, advice and assistance and access to preventative and well-being services in the community.

Local authorities need to be aware of the need to work with the reciprocal local authority in England if the individual in question has been serving their sentence in the secure estate in England but is to resettle in Wales. It should be noted that there are no prisons for women in Wales.

Local authorities need to be aware of the requirements under the Housing (Wales) Act to help those returning to Wales in the secure estate, threatened with homelessness, to find suitable accommodation upon release and being involved in the planning 'for release' process as early as possible. More detail is contained in the Code of Guidance for Local Authorities Allocation of Accommodation and Homelessness 2015 in addition to a National Homelessness Standard for People due to be released.

The probation services will also have a major role to play in terms of leading the development of the prisoner's resettlement plans. Links between these plans and the individual's care and support plans must be made explicit.

It will also be important to take account of and be informed by the Multi Agency Public Protection Arrangements (MAPPA) when relevant to a prisoner's resettlement. The purpose of MAPPA is to ensure that comprehensive risk assessments are undertaken and robust risk management plans are in place for sexual and violent offenders. This is to reduce the risk of serious harm, the likelihood of reoffending and to prevent further victimisation. MAPPA takes advantage of co-ordinated information sharing across the agencies on each MAPPA offender and ensures that appropriate resources are directed in a way that enhances public protection. Adult Social Care would already be involved in managing MAPPA offenders whilst in psychiatric hospital and once discharged into the community.

Partnership arrangements

While the new duties to those in the secure estate through sections 185-188 of the 2014 Act fall to local authorities, there is recognition that the local authority cannot deliver these alone. They need to work in partnership across their departments such as social services, housing, and education; and with their external partners such as the local health board, NOMS in Wales, and third and independent sector organisations; many of whom provide preventative and well-being services as well as care and support services.

Establishments within the secure estate have very specific processes and procedures and local authorities need to ensure that they work with colleagues from NOMS in Wales to ensure that the new arrangements are robust and proportionate to the care and support needs presented and are practical and workable within the operational regimes within the prison. This will include abiding by all rules and practices for secure establishments, including (but not limited to) security policies such as searches on entry / exit for restricted items, and equality procedures.

These new provisions will provide opportunities to enhance partnership that will benefit the individual and the community. To realise the benefits there will need to be an integrated approach with criminal justice agencies and their existing networks to both support the individual's care needs and to reduce the risk of offending behaviour. Links should be made with the Police and Crime Commissioners, and other statutory and non-statutory partners, including local criminal justice boards, and the multi-agency Integrated Offender Management Cymru regional groups and those delivering offender substance misuse services, as well as the young people's Regional Resettlement Consortia which are supporting the reintegration and resettlement of young people. Local authorities will need to be mindful that different networks exist for adults and children.

Local authorities should also consider discussing with the relevant local health boards the value of developing an integrated health and social care approach. This would include working with their housing colleagues, local health boards, and other partners to make best use of resources to deliver these and partners' requirements.

There are four Health and Prison Partnership Boards for the prisons in Wales. These local partnership boards draw together representatives from the local health board in which the prison is located and the prison to plan and deliver healthcare services to meet the prison's population needs. Consideration could be given to expanding the membership and remit of these partnership boards to include local authority social services representatives to integrate care and support requirements. Each prison has a health care team. The Prison Health Information Network (PHIN) is an overarching forum that brings together prisons and health care.

There are likely to be significant benefits to local authorities in working collectively to provide a consistent Wales approach, along with their other partners, and develop a dedicated resource that can provide equitable provision and access to care and support services to prisoners at whichever prison or approved premises in Wales they are held. It should be recognised that there are regular prisoner movements within the prison estate in Wales which would benefit from a collective approach being adopted by local authorities.

Meeting Care and Support Needs

The remainder of this code covers the main functions and requirements of the 2014 Act in terms of a local authority's responsibilities in meeting the care and support needs of its citizens and offers guidance on what issues a local authority may need to consider in designing and delivering this for its citizens in the secure estate.

Population Needs Assessment

Section 14 of the 2014 Act states that local authorities must work with their local health board partners to jointly assess the extent to which there are people with care and support needs, and carers with support needs within their areas. The assessment must consider the extent to which these needs are currently met/ not met and the range and level of services required to meet these needs (see the Code of Practice on Assessment and Care Planning and Preventative and Community based Services).

Local authorities must work with the relevant Prison Health Partnership Board and Public Health Wales to consider the implications of the Health Needs Assessments that have been conducted, and to consider developing future integrated assessments.

Local authorities must be mindful to include populations from the secure estate in their 'population needs assessments' and take into account any

future plans for the secure estate in Wales – for example, plans for a new prison in Wrexham.

Whilst the code has focussed on the population in secure accommodation, there are at any one time some 16,000 offenders in Wales who are supervised in the community by probation services. Local authorities must consult with NOMS in Wales as part of the local authorities' population needs assessment.

Preventative and community based services

Section 15 of the 2014 Act sets out the intention to increase and develop the number and range of primary, community and well-being services:

- to help people improve their lives
- to support them to better maintain their independence
- to allow them to take control over their lives.

Local authorities should use the provision of section 17 Information, Advice and Assistance service, to direct and signpost people to preventative and well-being services in their community that can support people in this way (see the code of practice on preventative and community based services). This may, by way of illustration, include such services as:

- housing advice and options for those with care and support needs
- befriending services
- advocacy support
- availability of health services
- practical help with planning to meet current or future care needs
- numeracy and literacy classes
- self help – books on prescription to improve empowerment
- motivations training – reintegration with families i.e. invisible walls
- prisoner champions - informal social service support networks

Local authorities must consider how they will deliver preventative services needed by those in custody.

They should also consider how best to deliver those services to offenders who are under the responsibility of probation services in the community, taking account of the Wales Reducing Re-offending strategy which has previously been referred to on page 5.

Social enterprises, co-operatives, user led services and the third sector

Local authorities have a general duty under section 16, Part 2 of the 2014 Act to promote social enterprises, co-operatives, user led services and the third sector. Local authorities should work with these organisations. Local authorities should consider how social enterprises and co-operatives would be

able to support the preventative and community based services available for those in custody.

Information, advice and assistance

Local authorities have a general duty under section 17, Part 2 of the Act to provide people with information, advice and assistance. Through partnership working, local authorities must find ways to deliver the Information, Advice and Assistance Service to those in the secure estate while they are detained and in preparation for their release.

The ability for prisoners to be able to access accurate, timely and appropriate information, advice and assistance both on entering prison, during their time in custody and prior to release is crucial in ensuring that prisoners are appropriately supported and that they are likely to be able to maximise their opportunities upon release.

The profile of each prison will be important to the local authorities in deciding how to deliver Information, Advice and Assistance and preventative and well-being services to those in the secure estate. Local authorities will need to be mindful of the profile of the prison population in terms of those with additional learning needs, mental health problems, substance misuse issues and the appropriate type of communication within each facility to ensure the requirements for the Information, Advice and Assistance Service to be accessible as well as the need to provide access through the Welsh language where this is the wish of the individual.

NOMS in Wales can support local authorities in designing and enabling the delivery of the Information, Advice and Assistance Service to those in the adult secure estate. Local authorities will need to engage with prison staff and learn about the environment and the regime that operates in order to design and deliver what is most effective. The regime and operational constraints will differ in each establishment within the secure estate to reflect the offence and population profile of that facility.

The prison can assist the local authorities in designing the Information, Advice and Assistance Service by establishing focus groups with offenders in order to seek their views on what they would want to see from such a service and the best way to deliver that in these circumstances. How the Information, Advice and Assistance Service is made available needs to be given careful consideration given that there is limited internet access and restricted telephone access for those in the secure estate

Local authorities will need to engage with prison staff to identify how to use existing resources already deployed i.e. health care staff and third sector staff in order to maximise the accessibility of the Information, Advice and Assistance Service. Section 60 (6) of the Housing (Wales) Act 2014 also provides opportunities for the local authorities to join up and look to provide a local authority wide, holistic 'package of information, advice and assistance'

to those in the secure estate covering 'care and support needs' as well as housing advice and support to prevent homelessness.

The role of the offender supervisor at the prison or approved premises and those working for the probation services should also be considered by local authorities to maximise the use of existing resources and create a holistic package of 'care and support' for individuals. It will be important that this will form part of the management of the individual's offending-related behaviour risks and public protection

The potential role of the 'virtual campus' internet system available in prison to support prisoners' learning and skills and resettlement may be of interest to local authorities as one of the means to delivering their Information, Advice and Assistance Service. Local authorities should engage with NOMS in Wales to further explore opportunities for it to be used.

The use of 'secure email' for those in the secure estate might also offer opportunities to deliver the Information, Advice and Assistance Service to individuals – and for families and friends of those in the secure estate to pass on information and advice obtained on their behalf.

Assessment and care planning

Those in the secure estate with 'care and support needs' have a right to an assessment (including following a self referral) with the aim of meeting their personal well-being outcomes, just as they would if they were living in the community (see Code of Practice on Assessment and Care Planning).

Local authorities must find ways in which to undertake the assessments of those in the secure estate. Local authorities must identify how they will carry out these assessments, ensuring that they are proportionate to the need, and be clear about which staff will be responsible for undertaking the assessments for those in the secure estate.

Just as in the community, a local authority may combine a needs assessment with another assessment, or may carry out the assessment jointly with another assessment. Local authorities must consider establishing joint arrangements with local health boards to deliver the care and support arrangements alongside the health needs of prisoners. For example, the initial health screening of those in the secure estate could provide an opportunity to undertake the assessment for care and support needs. Likewise links need to be made with the Risk Assessment undertaken by the Offender Manager once an individual is sentenced to take account of risk of serious harm and reoffending to provide a holistic assessment of the individual. The Youth Justice Board has in place an assessment framework

called Asset which is used by all Youth Offending Teams, which is being updated to Assets Plus⁴ which may also prove helpful to link with.

The ability for prisoners to be able to access appropriate assessment arrangements on entering prison is important, but equally local authorities need to be mindful of the fluctuating needs of prisoners and that at other times during a prisoner's sentence they may require an assessment or a review.

For those who will require a 'care and support' plan the local authority should integrate with other care / treatment plans, as appropriate. A single integrated care plan for the individual will maximise consistency and effectiveness of the care they receive.

The Mental Health Care and Treatment Plans required under the Mental Health (Wales) Measure 2012 sets out the required format of care and treatment plans for people using secondary mental health services. The Care and Treatment Plan offers a holistic approach considering the whole person and covering all areas of life. Using a similar format for the care and support plan would ensure that people using secondary mental health services that also require 'care and support' could have a single, integrated care plan, rather than two different plans. This is particularly relevant given that only 8% of the prison population held in Wales, at any given time, do not suffer from any type of diagnosable mental health problem; the majority have one or more presenting difficulty with a range of severity⁵.

If an individual has entered the secure estate for the first time, the assessment of their care and support may need to be in greater depth to an assessment where the individual is well known to the prison service and has served multiple sentences. However, local authorities should be aware that a person's level of need can change quickly and significantly (for example, following a stroke). The local authority may need to consider how this may be undertaken.

If an adult refuses an assessment, the local authority's duty to carry out the assessment does not apply. However, there are cases where the local authority **must** carry out an assessment notwithstanding a refusal (see Code of Practice on Assessment and Care Planning).

Next Steps after Assessment

Local Authorities should ensure that all relevant partners are involved in the care and support planning and take part in joint planning with health partners.

Where a local authority is required to meet needs it must prepare a care and support plan for the person concerned and involve the individual to decide

⁴ Asset Plus - this is the new assessment framework

<http://www.justice.gov.uk/youth-justice/assessment/assetplus>

⁵ A Prison Mental Health Needs Assessment <http://www.wales.nhs.uk/sitesplus/888/news/27921>

how to have their needs met. The local authority should also involve others with the person's health and well-being, including prison staff, offender supervisor and staff of approved premises and health care staff to ensure integration of care, and fit with the custodial regime as appropriate.

Local authorities should aim to ensure that consent is given so that individual care plans are shared with other providers involved with the individuals' support and management. If consent is not given the local authorities should try to impress on the individual the value of doing so and explain how sharing will improve inter-agency working for the individual's benefit.

For those assessed as being in need of equipment or adaptations to their living accommodation to meet their needs, local authorities must discuss with their partners in prisons, approved premises and health care services where responsibility lies. Where this relates to fixtures and fittings (for example, hand rail or ramp) it could be for prisons to deliver. For specialised and moveable items such as beds, hoists, or wheelchairs, it may be the responsibility of the local authority. Some suggested adaptations may not be possible in the secure environment. In these situations local authorities should liaise with custodial managers and ensure that the individual's care and support needs continue to be met.

Local authorities may commission or arrange for others to provide care and support services, or delegate the function to another party. If such an arrangement is implemented local authorities should consider retaining the functions relating to requirements for continuity of care between settings and must retain the functions in relation to charging and safeguarding.

Care and support plans for those in custodial settings will be subject to the same review process as all other plans and should be reviewed each time an individual enters custody from the community or is released to the community.

End of Life Care

The provision will extend to those who reach their end of life whilst in the secure estate (both adults and children). For provision of palliative care some will transfer to a hospital, hospice or care home or to an alternative prison where a more suitable environment is available. In these cases responsibility for care and support will pass to the NHS or the new local authority once the individual arrives at the new location.

Approved premises are not in general a suitable location for the provision of end of life care.

Safeguarding adults

Local authorities should follow the safeguarding policies of custodial settings and work with prisons and approved premises staff to ensure people in custodial settings are safeguarded.

Local authorities should consider the importance of inviting NOMS in Wales staff to be members of Safeguarding Adult Boards. Separate guidance will be developed by NOMS on safeguarding adults who receive their services.

Safeguarding children

Local authorities should follow the safeguarding policies of custodial settings, and work with youth detention and secure children's unit staff to ensure children and young people in custodial settings are safeguarded.

Local authorities should consider the importance of inviting NOMS in Wales staff to be members of Safeguarding Children Boards. Separate guidance will be developed by NOMS on safeguarding children who receive their services.

Eligibility

Eligibility for those in the secure estate will be determined as part of the assessment and eligibility process, in the same way as those living in the community (see Code of Practice on Eligibility).

Local authorities need to be aware that 'eligibility' can be applied and dis-applied at different stages of an individual's journey for 'care and support' and is dependant on an individual's ability to manage their own care and support.

Portability/ cross border arrangements

Those in custody with 'care and support needs' must have a right to portability when transferring from one prison to another in Wales and on leaving prison just as they would if they were living in the community and seeking to move to another part of Wales

The local authority with the responsibility for the individual's care and support while they are in the secure estate, must find ways in which to work co-operatively with the receiving authority in order to put in place appropriate arrangements to support the individual if they have been eligible for care and support while serving their sentence.

As portability is a new legislative requirement local authorities must identify how they will implement the portability arrangements for those in the secure estate as they move towards their release. It is anticipated that the use of resettlement will help to ensure that those professional relationships in the relevant organisations are established and maintained.

In these circumstances, the Governor of the prison within which the individual prisoner is in custody, must notify the local authority responsible for the care and support of the individual of the intended move. This move could be to another prison or into the community. The sending authority must notify the receiving authority of the move as soon as practical and arrangement will be

the same as for anyone else living in the community (see Code of Practice on Eligibility).

There are no formal cross border arrangements for those prisoners moving across country borders. If prisoners are moved between England and Wales then it will be for the prisons and local authorities involved to communicate with each other and to share information about a prisoner's care and support arrangements. Local authorities should be aware that the English Care Act will be implemented in April 2015, ahead of the Social Services and Wellbeing (Wales) Act in 2015. Cross border moves other than between England and Wales should be arranged in discussion with custodial managers, local authorities and appropriate officials in the relevant countries.

If a male prisoner is due to return to Wales following release from prison in England, the likelihood is that they will already have moved to a prison in Wales as part of that resettlement process. In these circumstances the 'portability' rules will apply once the prisoner is in Wales

For female prisoners, because they serve their sentence in prisons in England and for any other prisoners who return to Wales directly from a prison in England, there will need to be robust arrangements between the prison, sending local authority and receiving local authority in order to ensure a co-ordinated and streamlined process to smooth the transition of 'care and support'.

Local authorities must work collectively with NOMS in Wales and the prison estate to identify a process to ensure that there is adequate support for those individuals in the secure estate who are moved between prisons, often at short notice. Many external factors present challenges for the prison estate to maintain sufficient flexibility but this will also impact on local authorities' ability to deliver on their care and support duties.

Information Sharing

The willingness and ability to share appropriate and relevant information between professionals and service providers is inherent to the delivery of effective integrated services.

Local authorities and local health boards need to have systems in place to ensure that, as a minimum, information in the national Core Data Set (part of the assessment process) for an individual is shared between partners, but they need to be mindful that NOMS Wales owns personal data for those in the secure estate. This will include developing and maintaining a Wales Accord for Sharing Personal Information (WASPI), a compliant information sharing protocol, with and between the appropriate agencies.

Organisations should also ensure that the arrangements they put in place to share personal information are compliant with the Data Protection Act 1998 (DPA) and their staff are supported and trained appropriately in both

information sharing and compliance with the DPA. Staff accessing or using the data must be trained in good data handling and be aware of security issues.

The presumption shall be that all information is shared and individuals must be informed of this at the start of the assessment and care and support planning process.

Charging

Where provisions within the 2014 Act are not dis-applied or modified these will apply in the same way to those in the secure estate as to any other resident in the community. For example, charging for care and support for those detained will be the same as any other citizen where a Welsh local authority is responsible for that individual's care and support (see Code of Practice on Charging).

Under the 2014 Act a child cannot have a charge imposed on them. Charges which relate to a child's 'care and support' can only be made on the parent if that parent is over 18 years of age. This applies to Welsh children in prisons in Wales as well as to those of other nationalities in prison in Wales.

Complaints and Appeals

Local authorities should provide information to those in custodial settings on how to make a complaint and seek redress about provision of care and support services (See the Code of Practice on Complaints).

Managers of custodial settings should inform the local authorities where a prisoner wishes to make a complaint as soon as they are made aware.

Standards and Assessments

The Prison and Probation Ombudsman (PPO) conducts investigations in prisons following complaints about prison services, as well as deaths in custody and other significant events. The PPO will commission the relevant body to assist their investigations where it is considered that an aspect of care and support has contributed to the event. Local authorities should co-operate with any investigation as required.

Both prisons and probation services are inspected by HMI Prison and HMI Probation. Local authorities should make any relevant assessments and other documents available to inspecting bodies as part of the investigation.

Local authorities will receive copies of investigation reports that are relevant to them. It will be good practice for local authorities to contribute to the responses and action plans in conjunction with NOMS in Wales and health care providers and commissioners.

Local authorities should co-operate with and attend any inquests that are held following a death in custody, where they are requested to do so or they have relevant information.

Workforce implications

Local authorities, and their partners, must identify the key operational practices that will be required and ensure that staff are well trained and available to meet these requirements.

Staff supporting those in the secure estate both in the prison regime, and those about to be released, will need to have sufficient knowledge of the care and support system and skills to assess any 'care and support needs'. They will also need a clear understanding of how this care and support can best be delivered to the individual but also demonstrate an understanding of the prison regime requirements and need for security and safeguarding issues.

Staff will also need to work co-operatively across their own departments and with other agencies, such as housing colleagues working to the Housing (Wales) Act to fulfil the requirements to deliver streamlined and effective care and support to prisoners on an in-reach basis – bringing these services into prisons so prisoners can access them.

Training offered to local authority staff would be beneficial to staff of other agencies or those working in the third sector to support those in the secure estate. This approach would have the advantage of greater consistency in terms of the methodologies adopted and the ability to deploy existing resources to best effect.

Local authorities must produce a training plan to consider workforce implications. This should be done on a national basis and local authorities should work together to develop how to deliver social care to those in custody.

Transition Arrangements post 2016

The 2014 Act comes into effect in April 2016 and local authorities will be planning to operate the new arrangements from the changeover date. However, there will need to be some *arrangements to cover the backlog of individuals already in the secure estate* who will not have had opportunities to have their 'care and support' needs assessed, nor to have been able to access the IAA service nor any preventative and well-being services in the community. This will be the same as for those in the community, and implementation plans developed by local authorities will need to address how this workload is approached.

Additional Points for Consideration by Local Authorities

There are five key intervention stages during an offender's journey through the criminal justice system to prison at which there would be some health intervention provided:

- Arrest stage – Police custody may have mental health provision and drug treatment referral service.
- Court Stage – Access to services of a Mental Health Liaison Nurse. NPS Wales is responsible for preparing the court reports for those being given a custodial sentence and for the sentenced offender's risk assessment.
- Prison Reception and Induction Stage – All prisoners will have a basic screening and health care assessment involving the health care team and others. This would continue during the early days of the prisoner's induction to help inform the required interventions for the prisoner and in preparing the sentence plan by the Offender Management Unit at prison. Following from the reception stage probation services will be responsible for developing a resettlement plan for the prisoner.
- Change of circumstance to a prisoner whilst in prison.
- Prisoner resettlement and release.

Local authorities may wish to consider the benefits of providing any services or liaison at these specific points in the journey.

CHAPTER 2: ORDINARY RESIDENCE AND DISPUTE RESOLUTION

Introduction

Aim and scope

This chapter deals with:

- determining ordinary residence in relation to assessment and meeting eligible care and support needs
- determining ordinary residence when an adult moves into certain types of accommodation out of area
- disputes between authorities about a person's ordinary residence and portability of care and support, and the process for seeking a determination by the Welsh Ministers or appointed person.

The principles governing placements of adults in other parts of the UK (cross-border placements), and the procedures for resolving disputes that may arise in relation to them, are similar to those for out-of-county placements within Wales. Guidance on cross-border placements is attached to this code of practice at Annex 2.

Context and purpose

Ordinary residence

With respect to the duty to assess care and support needs (and support needs of carers) and determinations of eligibility to meet those needs:

- Section 19 of the Social Services and Well-being (Wales) Act 2014 requires that where an adult may have needs for care and support the local authority must assess whether the adult does have such needs, and if so, what those needs are. This duty applies to any adult who is ordinarily resident in the authority's area and to any other adult who is within the authority's area. Section 21 makes similar requirements in respect of children.
- Section 24 of the Act requires that where a carer may have needs for support the local authority must assess whether the carer does have such needs (or is likely to do so in the future), and if so, what those needs are (or are likely to be). This duty applies to any carer who is providing or is likely to provide care for an adult or disabled child who is ordinarily resident in the authority's area, and to any other adult who is within the authority's area.
- Where the care and support needs of an adult meet the eligibility criteria (or the local authority considers it necessary to meet those needs in order to protect the adult from abuse or neglect or a risk of

abuse or neglect) section 34 requires local authorities to meet those needs where the adult is ordinarily resident in the local authority's area or is of no settled residence within the authority's area.

- Where the support needs of a carer meet the eligibility criteria section 40 requires local authorities to meet those needs where the person cared for by the carer is ordinarily resident in the local authority's area, or is of no settled residence within the authority's area, or if either the carer or the cared for person is a disabled child within the local authority's area.
- Ordinary residence is not a condition of the duty to meet the care and support needs of a child. Section 37 requires only that the child is within the local authority's area and that their needs meet the eligibility criteria or the local authority considers it necessary to meet their needs in order to protect the child from abuse, neglect or other harm (or the risk of abuse, neglect or other harm).
- Where a local authority provides accommodation under section 76(1) (accommodation for children without parents or who are lost or abandoned etc) for a child who was (immediately before it began to look after the child) ordinarily resident within the area of another local authority, it may recover from that other local authority any reasonable expenses incurred by it in providing the accommodation and maintaining the child (see section 193 of the Act).
- However, in determining the ordinary residence of a child for the purposes of the Act, the child's residence in the following places is to be disregarded: a school or other institution; a place in which the child is placed in accordance with the requirements of a supervision order under the Children Act 1989 or in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; and accommodation provided by or on behalf of a local authority in Wales (or a local authority in England).

Section 194 of the Act makes provision for establishing an adult's ordinary residence. Section 194(1) makes provision about an adult's ordinary residence where the adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations. Section 194(2) contains a power to make regulations on the types of accommodation to which this provision applies.

The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 specify that section 194(1) will apply to care home accommodation and adult placements (commonly known as 'shared lives' accommodation). These provisions cover adults with care and support needs who are living in accommodation in Wales.

[Dispute resolution](#)

Section 195 of the Act makes provision for determining disputes between local authorities about ordinary residence for the purposes of the Act, or between a sending and a receiving authority about the application of section 56 of the Act (portability of care and support). These provisions cover ordinary residence and disputes about ordinary residence and the portability of care and support between local authorities in Wales only. Section 195(2) contains a power to make regulations governing the way such disputes are handled.

The Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2015 specify the procedures which local authorities must follow in handling disputes about ordinary residence and portability of care and support.

Section 189(8) of the Act (on provider failure) provides that any dispute about the application of section 189 is to be determined under section 195 as if it were a dispute of the type mentioned in section 195(1). The regulations under section 195(2) therefore also apply to disputes about co-operation and about costs incurred under the temporary duty.

Section 117(4) of the Mental Health Act 1983 (as inserted by section 75 of the Care Act 2014) provides that where there is a dispute about where a person was ordinarily resident for the purpose of section 117(3), and the dispute is between local social services authorities in Wales, section 195 of the Act applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of the Act.

The regulations and this code of practice replace the statutory guidance on ordinary residence issued in 1993 (WOC 41/93 / LASS 5/133/10).

Ordinary Residence

Where a person is considered (or 'deemed') to be ordinarily resident is crucial in deciding which local authority is required to meet his or her care and support needs. 'Ordinary residence' is one of the key tests which must be met to establish whether a local authority is required to meet a person's eligible needs. It is therefore crucial that local authorities establish, at the appropriate time, whether a person is ordinarily resident in their area, and whether such duties arise.

The test for ordinary residence, applies differently in relation to adults with needs for care and support and carers. For adults with care and support needs, the local authority in which the adult is ordinarily resident will be responsible for meeting their eligible needs. For carers, the responsible local authority will be the one where the adult for whom they care is ordinarily resident. Establishing responsibility for the provision of support for carers, therefore, requires the local authority to consider the ordinary residence of the adult needing care and support.

The determination of ordinary residence should not delay the process of assessment or determination of eligible needs, nor should it stop the local authority from meeting the person's needs. In cases where ordinary residence is not certain, the local authority **should** meet the individual's needs first, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities.

How to determine ordinary residence

There is no definition of 'ordinary residence' in the Social Services and Well-being (Wales) Act, and the term should therefore be given its ordinary and natural meaning. In most cases, establishing a person's ordinary residence is a straightforward matter. However, there will be circumstances in which ordinary residence is not as clear-cut (for example, when people spend their time in more than one area, or move between areas). Where uncertainties arise, local authorities **should** always consider each case on its own merits.

The concept of ordinary residence involves questions of both fact and degree. Factors such as time, intention and continuity (each of which may be given different weight according to the context) have to be taken into account. The courts have considered the meaning of 'ordinary residence' and the leading case is that of *Shah v London Borough of Barnet* (1983). In this case, Lord Scarman stated that

unless ... it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.

Local authorities **should** always have regard to this case when determining the ordinary residence of people who have capacity to make their own decisions about where they wish to live (see below for guidance on determining ordinary residence if the person lacks capacity to make decisions about their accommodation).

In particular, local authorities **should** apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes, irrespective of whether they own, or have an interest in, a property in another local authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place.

Cases where a person lacks capacity

All issues relating to mental capacity should be decided with reference to the Mental Capacity Act 2005 and the associated code of practice under this Act. It **should** always be assumed that adults have capacity to make their own decisions, including decisions relating to their accommodation and care, unless it is established to the contrary.

The test for capacity is specific to each decision at the time it needs to be made, and a person may be capable of making some decisions but not others. It is not necessary for a person to understand local authority funding arrangements to be able to decide where they want to live.

If it can be shown that a person lacks capacity to make a particular decision, the 2005 Act makes clear who can take decisions on behalf of others, in which situations and how they should go about doing this. For example, if a person lacks capacity to decide where to live, a 'best interests' decision about their accommodation should be made under the 2005 Act. Under section 1(5) of the 2005 Act, any act done, or decision made (which would include a decision relating to where a person without capacity should live), **must** be done in the best interests of the person who lacks capacity. Section 4 of the 2005 Act explains how to work out the best interests of a person who lacks capacity, and provides a checklist.

If a person has been placed in accommodation following a 'best interests' decision under the 2005 Act, and uncertainties arise about their place of ordinary residence, an alternative test should be used to establish ordinary residence. However, a person's mental capacity **should** always be taken into account when making any decision about their ordinary residence and different tests should only be used where it can be shown that a person is not capable of forming their own decision as to where to live. This is because the use of a different test is based on the assumption that the person lacking capacity cannot have adopted their place of residence voluntarily, as would usually be the case.

People with no settled residence

Where doubts arise in respect of a person's ordinary residence, it is usually possible for local authorities to decide that the person has resided in one place long enough, or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that local authorities conclude that someone is of no settled residence. For example, if a person has clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change, a local authority may conclude the person to be of no settled residence.

Section 35 of the Social Services and Well-being (Wales) Act makes clear that local authorities have a duty to meet the needs of adults if they are present in its area but of no settled residence and the other conditions are met. Sections 40 and 42 of the Act make similar provision in relation to the duties to meet the needs of carers of adults. In this regard, adults who have

no settled residence, but are physically present in the local authority's area, should be treated the same as those who are ordinarily resident.

A local authority may conclude that a person arriving from abroad is of no settled residence, including those people who are returning to Wales after a period of residing abroad and who have given up their previous home in this country.

Ordinary residence when arranging accommodation in another area

There will be cases where the local authority considers it appropriate for a person's care and support needs to be met by the provision of accommodation in the area of another authority. If the person has needs which can only be met through certain types of accommodation, then in addition to their involvement in the planning process, the person will also have a right to make a choice about their preferred accommodation. This right allows the person to make a choice about certain types of accommodation, including where this is situated within the area of another authority. Provided that certain conditions are met, the local authority must arrange for the preferred accommodation the person has chosen. Such preferences for particular accommodation are to be covered under regulations to be made under section 57 of the Social Services and Well-being (Wales) Act 2014 and the code of practice to be issued on Part 4 of the Act.

This will mean that local authorities will in some circumstances be required to arrange accommodation that is located in a different area. Moreover, there will also be other situations in which a local authority chooses to arrange accommodation for a person in another area, because that has been agreed with the person concerned. In any such case, it should be clear which local authority is responsible for meeting the person's needs in the future.

(It should be noted that the exact policy on choice of accommodation is currently being developed, and consultation on draft regulations and a code of practice will take place next year. It is not possible at present, therefore, to elaborate more on this than set out above.)

Section 194(1) to (3) of the Social Services and Well-being (Wales) Act, and the regulations made under it, set out where an adult is to be treated as being ordinarily resident if their care and support needs can be met only if they are living in certain specified accommodation (as set out in The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015. This sets out a clear principle which will apply when the adult is placed in another authority's area – i.e. that the adult placed 'out of area' is deemed to continue to be ordinarily resident in the area of the first or 'placing' authority, and does not acquire an ordinary residence in the 'host' or second authority. The local authority which arranges the accommodation therefore retains responsibility for meeting the adult's needs.

The regulations specify the types of accommodation to which this provision applies:

- care home accommodation – i.e. accommodation within the meaning of section 3 of the Care Standards Act 2000
- shared lives scheme accommodation – i.e. accommodation with personal care for an adult who lives with a host family.

Where an adult has needs which can only be met through the provision of one of these types of accommodation, and the accommodation arranged is in another area, then the principle of “deeming” ordinary residence applies. This means that the adult is treated as remaining ordinarily resident in the area where they were resident before the placement began. The consequence of this is that the local authority which arranges the accommodation will remain responsible for meeting the person’s needs, and responsibility does not transfer to the authority in whose area the accommodation is physically located.

The ‘placing’ authority’s responsibility will continue in this way for as long as the adult’s needs are met by a specified type of accommodation. This will include situations where the adult moves between different specified types of accommodation in another (or more than one other) area.

The ordinary residence ‘deeming’ principle applies most commonly where the local authority provides or arranges the accommodation directly. However, the principle also applies where a person takes a direct payment and arranges their own care and support. In such cases the individual has the choice over how their needs are met, and arranges their own care and support. If the care and support plan stipulates that the person’s needs can be met only if the adult is living in one of the specified types of accommodation, and the person chooses to arrange that accommodation in the area of a local authority which is not the one making the direct payment, then the same principle would apply – i.e. the local authority which is meeting the person’s care and support needs by making a direct payment would retain responsibility. However, if the person chose accommodation that is outside what was specified in the care and support plan or of a type of accommodation not specified in the regulations, then the ‘deeming’ principle would not apply.

If a local authority arranges a type of accommodation as specified in the regulations in another area, or becomes aware that an individual with a direct payment has done so themselves, the authority should inform the host authority, to ensure the host authority is aware of the person in their area. The first authority should ensure that satisfactory arrangements are made before the accommodation begins for any necessary support services which are provided locally, such as day care, and that clear agreements are in place for funding all aspects of the person’s care and support.

In practice, the first local authority may enter into agreements to allow the authority where the accommodation is located to carry out functions on its behalf. This may particularly be the case where the accommodation is located some distance away, and some functions can be performed more effectively

locally. Local authorities may make arrangements to reimburse to each other, any costs occurred through such agreements. However, local authorities should take account of their on-going obligations towards the individual when arranging for such types of accommodation.

There may be occasions where a provider chooses to change the type of care which it provides, for instance to de-register a property as a care home and to redesign the service as a supported living scheme. Where the person remains living at the same property, and their needs continue to be met by the new service, then ordinary residence should not be affected, and the duty to meet needs will remain with the first authority. This will occur even if the person temporarily moves to another address whilst any changes to the property occur.

NHS accommodation

Where a person goes into hospital, or other NHS accommodation, there may be questions over where they are ordinarily resident, especially if they are subsequently discharged into a different local authority area. For this reason, section 194 of the Social Services and Well-being (Wales) Act makes clear what should happen in these circumstances.

A person for whom NHS accommodation is provided is to be treated as being ordinarily resident in the local authority where they were ordinarily resident before the NHS accommodation was provided. This means that where a person, for example, goes into hospital, they are treated as ordinarily resident in the area where they were living before they went into hospital. This applies regardless of the length of stay in the hospital, and means that responsibility for the person's care and support does not transfer to the area of the hospital, if this is different from the area in which the person lived previously.

This requirement also applies to NHS accommodation in another part of the UK. If a person who is ordinarily resident in Wales goes into hospital in England, Scotland or Northern Ireland, their ordinary residence will remain in Wales (in the local authority in which they resided before going into hospital) for the purposes of responsibility for the adult's care and support.

Continuing NHS Healthcare (CHC) is a package of care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need. In cases where people are assessed as eligible for CHC and are placed, or have already been placed in a care home outside their area, the placing Local Health Board (LHB) will remain responsible for funding, monitoring and reviewing the care home placement.

Where a person is placed in a care home but is not eligible for CHC, the funding responsibilities for NHS Funded Nursing Care rest with the receiving LHB, or Clinical Commissioning Group (CCG) in England. Cross-border arrangements with Scotland and Northern Ireland are to be confirmed.

Mental health aftercare

Under section 117 of the Mental Health Act 1983, local authorities together with Local Health Boards have a duty to provide mental health aftercare services for people who have been detained in hospital for treatment under certain sections of the 1983 Act who are in need of such services. These services must have the purposes of “meeting a need arising from or related to the person’s mental disorder” and “reducing the risk of a deterioration of the person’s mental condition and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder.” The range of services which can be provided is broad.

The duty on local authorities to commission or provide mental health aftercare rests with the local authority for the area in which the person concerned was ordinarily resident immediately before they were detained under the 1983 Act, even if the person becomes resident in another area where they are detained, or on leaving hospital. The responsible local authority may change, if the person is ordinarily resident in another area immediately before a subsequent period of detention which would require section 117 aftercare services.

Other common situations

Temporary absences

Having established ordinary residence in a particular place, this should not be affected by the individual taking a temporary absence from the area. The courts have held that temporary or accidental absences (including, for example, holidays or hospital visits in another area) should not break the continuity of ordinary residence, and local authorities should take this into account.

The fact that the person may be temporarily away from the local authority in which they are ordinarily resident, does not preclude them from receiving any type of care and support from another local authority if they become in urgent need. Local authorities have powers in the Social Services and Well-being (Wales) Act to meet the needs of people who are known to be ordinarily resident in another area, at their discretion and subject to their informing the authority where the person is ordinarily resident.

People with more than one home

Although in general terms it may be possible for a person to have more than one ordinary residence (for example, a person who divides their time equally between two homes), this is not possible for the purposes of the Social Services and Well-being (Wales) Act 2014. The purpose of the ordinary residence test in the Act is to determine which single local authority has responsibility for meeting a person’s eligible needs, and this purpose would be defeated if a person could have more than one ordinary residence.

If a person appears genuinely to divide their time equally between two homes, it would be necessary to establish (from all of the circumstances) to which of

the two homes the person has the stronger link. Where this is the case, it would be the responsibility of the local authority in which the person is ordinarily resident, to provide or arrange care and support to meet the needs during the time the person is temporarily away at their second home.

Resolving disputes about ordinary residence and portability of care and support

Where disputes occur, local authorities must take all reasonable steps to resolve the dispute between the various parties. This may include one local authority agreeing responsibility, or bespoke agreements to share any costs involved in meeting the person's needs. Where disputes cannot be resolved through discussion, the Welsh Ministers (or a person appointed by them) may be required to determine disputes.

Disputes should not run on indefinitely. Local authorities must take all steps necessary to resolve the dispute themselves before making a referral for a determination. If, having taken appropriate legal advice and considered the position carefully, they are still unable to resolve a particular dispute, they must apply for a determination. A determination should only be considered as a last resort.

It is critical that the person does not go without the care they need while a dispute is being resolved. One of the local authorities involved in the dispute must provisionally accept responsibility for the person at the centre of the dispute and be providing services. Where local authorities cannot agree which authority should accept provisional responsibility for the provision of services, the Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2014 provide that the local authority in which the person is living or is physically present must accept responsibility until the dispute is resolved. If the person is homeless, the authority in whose area that person is physically present must do so. The local authority which has accepted provisional responsibility is referred to as the 'the lead local authority'.

The Welsh Ministers or appointed person will not make a determination unless there is evidence that one local authority has provisionally accepted responsibility for the provision of services. The provisional acceptance of responsibility by one local authority does not influence the determination made by the Welsh Ministers.

If the determination subsequently finds another local authority to be the authority of ordinary residence, the lead local authority can recover costs from the authority which should have been providing the relevant care and support.

The Welsh Ministers or appointed person cannot make determinations in relation to services that may be provided in the future. Local authorities should note that where disputes arise as set out in the regulations, the assessed needs of the person should be met during the period of dispute. Local authorities should not provide reduced packages of care and support while the dispute is being determined.

Applications for a determination on ordinary residence can only be made where two or more local authorities are in dispute about a person's place of ordinary residence. Where the local authorities are in agreement about a person's ordinary residence, but the person is unhappy with the decision, the person would have to pursue this with the authorities concerned, and could not apply to the Welsh Ministers or an appointed person for a determination.

The Care and Support (Disputes about Ordinary Residence etc.) (Wales) Regulations 2014 also apply to the resolution of disputes between authorities in Wales about a person's ordinary residence for the purposes of section 117(4) of the Mental Health Act 1983.

Process for seeking a determination: ordinary residence

Where a lead local authority approaches another authority about a person's ordinary residence, but then does not continue engaging in a constructive dialogue to resolve the dispute with the other local authority, the other local authority can apply to the Welsh Ministers or appointed person for a determination. The other local authority should follow the steps set out in the regulations, including providing evidence of the attempts it has made to engage with the other authority.

The Welsh Ministers or appointed person will not allow ordinary residence disputes to run on indefinitely once they have been referred for a determination. Any local authority failing to have due regard to a determination would put itself at risk of a legal challenge by the resident or their representative or the other local authorities to the dispute.

Local authorities may wish to seek legal advice before making an application for a determination, although they are not required to do so. If legal advice is sought, local authorities may, in addition to the required documentation, provide a separate legal submission. Where legal submissions are included, there should be evidence that the submissions have been exchanged between the local authorities in dispute.

All applications for Welsh Ministers' determination should be sent to the Welsh Government at the address below:

Social Services and Integration Directorate
Welsh Government Officers
Cathays Park
Cardiff CF10 3NQ

If during a determination of the ordinary residence dispute by the Welsh Ministers or appointed person, a local authority in dispute is asked to provide further information to the Welsh Ministers or appointed person, that local authority must provide that information without delay.

If the local authorities involved in the dispute reach an agreement whilst the Welsh Ministers are considering the determination, they should notify the Welsh Government at the above address. Both parties must confirm that the dispute has been resolved after which the determination will be closed down.

Reconsidering disputes

If further facts come to light after a determination has been made, it may be appropriate for the Welsh Ministers or appointed person to reconsider the original determination. As a consequence of this, a different determination may be substituted. For example, because of the first determination, local authority A has paid an amount to local authority B but because of the effect of the second determination, some or all of the amount paid by local authority A to local authority B was not required to be paid. In this situation local authority B must repay that sum to local authority A.

Any review of the determination must begin within three months of the date of the original determination. This is needed to ensure clarity and fairness in the process and minimise the amount of time taken for determinations to be made.

Financial adjustments between local authorities

Sometimes a local authority has been paying for a person's care and support, but it becomes apparent that the person is in fact ordinarily resident elsewhere. In these circumstances the local authority which has been paying for that person's care can reclaim the costs from the local authority where the person was ordinarily resident.

This can occur in cases where it is not clear initially where the person is ordinarily resident. In order to ensure that the individual does not experience any delay to their care due to uncertainty over their ordinary residence, local authorities should be able to recover any losses due to initial errors in deciding where a person is ordinarily resident. This also extends to costs spent supporting the carer of the person whose ordinary residence was in dispute.

However, it does not apply where the local authority has chosen to meet the person's needs in the knowledge they were ordinarily resident elsewhere. If a determination has been revised as referred to in the paragraphs above that covers reconsideration of dispute, and because of the first determination, local authority A has paid an amount to local authority B, but because of the effect of the second determination, some or all of the amount paid by local authority A to local authority B was not required to be paid, local authority B must repay that sum to local authority A.

The Act also provides for the recovery of reasonable expenses incurred by a local authority in accommodating and maintaining a child who is without parents, or is lost or abandoned etc. (under section 76(1)) and who is

ordinarily resident in another authority, An authority may also recover reasonable expenses when it is accommodating a child, ordinarily resident in another authority, who is removed or kept away from home under Part 5 of the Children Act 1989, in police protection or whom it has been requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984 (provided that the child is not maintained in a community home, controlled community home, or hospital).

Cross-border disputes

The procedure for handling disputes about a person's ordinary residence between a local authority in Wales and a local authority in England or Scotland (or a Health and Social Care Trust in Northern Ireland) are set out in the Care and Support (Cross-Border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014. These also cover disputes about a person's ordinary residence in connection with section 117 of the Mental Health Act 1983 (after care services).

Annex 1

An Overview of the Welsh Prison Population

Prisons Serving Adults

As at 1 September 2014 there were 3167 prisoners held in Wales.

All the prisons within Wales are male only. There are five prisons in Wales:

- HMP Cardiff
- HMP Parc
- HMP Swansea
- HMP Prescoed
- HMP Usk

HMP Cardiff and HMP Swansea

HMP Cardiff is a Category B Local/Training Prison, and HMP Swansea is a Category B Prison, both holding male adult prisoners of 18 years and over, who are drawn predominantly from the surrounding court catchment area in South Wales.

HMP Prescoed & HMP Usk

HMP Prescoed and HMP Usk are operated and managed as one prison. HMP Prescoed accommodates Category C & D male prisoners from 19 years and over, and HMP Usk predominately sex offenders from 21 years and over.

HMP Parc

HMP Parc operates to accommodate convicted male adult prisoners and remand sex offenders and has a separate young person's secure facility.

Figure 1 shows data on the prison estate in Wales between 1 October 2012 and 31 December 2013 and offers the following profile:

	Cardiff	Parc	Swansea	Usk	Prescoed
Total population	784	1560	405	260	251*
New receptions (Oct – Dec 2012)	1033 (344pm)	550 (183pm)	479 (160pm)	88 (29pm)	119 (40pm)
% New receptions staying < 1 month*	48.4%	17.6%	34%	14.3%	18.3%
Prisoners in > 6months (% of population)	83 (10.6%)	749 (48.0%)	34 (8.4%)	154 (59.2%)	102 (40.6%)
Prisoners in > 1 year (% of population)	42 (5.4%)	355 (22.8%)	1 (0.2%)	97 (37.3%)	39 (15.5%)

*includes all those registered between 1st October and the 30th November 2012

There is no female prison within Wales with HMP Eastwood Park holding the majority of female prisoners from South Wales and HMP Styal those from North Wales.

HMP Eastwood Park

HMP Eastwood Park, Gloucestershire is a female closed local prison.

HMP Styal

HMP Styal, Cheshire receives adult women and, in some cases, young offenders, directly from the courts.

Currently adult male prisoners from Wales, depending on the offence and length of sentence could also serve their sentences in almost all of the 108 prisons in England with particularly significant numbers at HMP Altcourse in Liverpool, HMP Oakwood in Wolverhampton and HMP Stoke Heath in Shropshire. However the establishment of designated resettlement prisons will help bring people nearer to their resettlement areas, as referred below.

The **Offender Rehabilitation Act 2014** extends statutory supervision in England and Wales to around 50,000 offenders with sentences of less than 12 months. These individuals will serve their whole sentence in a resettlement prison and come out to a tailored package of supervision and support. The majority of those serving longer sentences will be moved to a resettlement prison at least three months before the end of their time in custody. This will enable the vast amount of offenders to be released from prisons in, or close to, the area in which they live. The Wales Community Rehabilitation Company will be responsible for the resettlement planning for prisoners returning to Wales in liaison with both the relevant criminal justice agencies and community agencies.

There are eight designated resettlement prisons for Wales: These are:

Prison	Type
HMP Cardiff	Adult male local resettlement prison
HMP Swansea	Adult male local resettlement prisons
HMP / YOI Parc	Adult male training resettlement prison
HMP / YOI Prescoed	Adult male open prison
HMP Altcourse	Adult male local resettlement prison
HMP Stoke Heath	Adult male training resettlement prison
HMP Eastwood Park	Female resettlement prison
HMP Styal	Female resettlement prisons

New Provision post 2017

In 2013 the Ministry of Justice announced plans to build a large prison on the former Firestone factory site in Wrexham. The new prison will be the first in North Wales and it will have a capacity for up to 2,106 prisoners.

The plans are for this establishment to be operational from 2017.

Populations and turnover

The information shown in figure 1 is for illustrative purposes only as it reflects the position at that time. The numbers of prisoners held at any one time within the prison estate in Wales may be fairly static and would reflect the number of prisoners that can be held at the establishment at the time (operational capacity). As at 1 September 2014 there were 3167 adult prisoners held in Wales. However, the turnover of that population is significant and varies for each prison.

Turnover can be affected with the movement of offenders within the secure estate either to support their resettlement, or to relieve capacity of the prison where they are held. Turnover is also affected by short sentences, where offenders will be serving only 3-6 months in some instances or by the immediate release from courts.

Figure 1 also demonstrates the turnover at the time to be just under half of new inmates in HMP Cardiff, and around a third of new inmates in HMP Swansea respectively, stayed less than one month. Of the total population in these two prisons some 83% in Cardiff, and 34% in Swansea, stayed less than six months.

The number of prisoners moving in and out of the prison increases the challenges faced by those with responsibility to provide IAA and 'care and support' to ensure prisoners receive and maintain appropriate provision to meet their 'care and support' needs.

Secure estate for children in Wales

The majority of children from Wales are placed in the two Welsh secure establishments:

HMP Parc, in Bridgend, has a Young Persons Unit that houses 64 young males aged from 15 – 17 years of age.

Hillside Secure Centre, in Neath, is a national purpose built Secure Children's Home which operates as an integral part of Social Services Children's Provision in Wales. Secure Children's Homes (SCHs) focus on attending to the physical, emotional and behavioural needs of the young people they accommodate. Youth Justice Board (YJB) contracted SCHs are run by local authorities. SCHs provide young people with support tailored to their individual needs. To achieve this, they have a high ratio of staff to young people and are generally small facilities, ranging in size from 8 to 40 beds. SCHs are generally used to accommodate young people aged 12 to 14 and

young people aged 15 and over who are assessed as having needs that are best met by the SCH environment. SCHs also take young people on Children Act (1989) S25 welfare orders made in Family Proceedings Courts on young people who meet the criteria found in the Children (Secure Accommodation) Regulations 1991.

Hillside accommodates up to 22 children and young people of either gender between the ages of 12 – 17 years. Of these 22 beds, 10 are commissioned by the YJB; the remaining 12 are designate welfare beds.

Hindley YOI can accommodate 248 young people / children, including 15 with a dedicated service specification for young men from Wales (there is no secure accommodation for under 18 in North Wales). The service specification was developed jointly by the Welsh Government and Youth Justice Board which aims to enhance the existing standard regime to support the additional needs of young males from mid and North Wales to include language, cultural, education, resettlement and religious needs.

Girls are no longer accommodated in YOIs and are placed in SCHs

A very small number of children and young people from Wales are accommodated elsewhere in England, including children and young people with complex needs who require specialist services.

ANNEX 2

Cross-border placements for adults

This annex to the code of practice covers:

- local authorities' (in Northern Ireland, Health and Social Care (HSC) Trusts) responsibilities with respect to placing individuals into residential care accommodation in different territories of the UK
- those matters local authorities (or HSC Trusts) should have regard to when considering, planning and carrying out a cross border placement
- the process for resolving disputes that may arise in relation to a cross border placement

Definitions

First authority – the local authority (or Health and Social Care (HSC) Trust in Northern Ireland) which places the individual in a cross border placement.

Second authority – the local authority (or HSC Trust) into whose area the individual is placed or to be placed.

Introduction

1. Schedule 1 to the Care Act 2014 sets out certain principles governing those occasions when a local authority decides that a person's need for care and support is best met by a placement into residential care in a different part of the UK.
2. Schedule 1 ensures that the local authority which makes the placement continues to be responsible for the costs of the placement. The Devolved Administrations in Wales, Scotland and Northern Ireland worked with the UK Government to agree the principles in Schedule 1.
3. Schedule 1 gives the Secretary of State for Health the power to make regulations governing disputes between local authorities in different parts of the UK. These include which Minister ('Responsible Person') has the authority to determine a dispute between two authorities, and which authority is the lead authority in relation to such a dispute. The Care and Support (Cross-border Placements and Provider Failure: Temporary Duty) (Dispute Resolution) Regulations 2014 cover England, Wales, Scotland and Northern Ireland.
4. The Social Services and Well-being (Wales) Act 2014 removes the current restrictions on the powers of Welsh local authorities to place persons in other UK countries. (Until the commencement of the 2014 Act, those powers were limited to placements in England). This means that from April 2016 local authorities in Wales will be able to place persons into residential care in England, Scotland or Northern Ireland.

5. Guidance to support the implementation of the provisions in Schedule 1 will be issued in each part of the UK. The Welsh Government and the other administrations are keen to ensure that the guidance issued in each part of the UK contains the same principles and approach, so that local authorities can work together in the best interests of people who need care and support.

Principles and purpose of cross-border placements

Purpose

6. People's health and well-being are likely to be improved if they are close to a support network of friends and family. In a small number of cases an individual's friends and family may be located in a different country of the UK from that in which they reside.
7. In deciding how best to meet an individual's assessed needs, the authority⁶ and the individual concerned may reach the conclusion that the individual's well-being is best achieved by a placement into residential care in a different country of the UK. Schedule 1 to the Care Act sets out certain principles governing cross border residential care placements.
8. As a general rule, responsibility for individuals who are placed in cross-border residential care remains with the first authority. This guidance sets out how the first and second authorities should work together in the interests of individuals receiving care and support through a cross-border residential placement.

Principles

9. The four administrations of the UK (England, Scotland, Wales and Northern Ireland) have worked together to agree Schedule One and this accompanying guidance. Underpinning this close co-operation have been two guiding principles that those involved in making cross-border residential care placements should abide by.

A person-centred process

10. The underlying rationale behind Schedule 1 is to improve the well-being of individuals who may benefit from a cross-border residential care placement. If a local authority, in deciding how an individual's assessed care needs can best be met, believes a cross-border placement could be appropriate they **should** discuss this with the individual and/ or their representative. In making the resulting arrangements, authorities **should** have regard to views, wishes,

⁶ Authority = Local Authority in England, Wales and Scotland. HSC Trust in Northern Ireland.

feelings and beliefs of the individual.⁷ In undertaking an assessment of an adult aged 65 or over local authorities and LHBs will need to consider whether or not the person whose needs are being assessed would benefit from the presence of a carer, friend or advocate.

Reciprocity and cooperation

11. The smooth functioning of cross-border arrangements is in the interests of all parties – and most importantly the interests of those in need of residential care – in all authorities and territories of the UK. It is not envisaged that authorities will suffer added financial disadvantage by making cross-border placements. All authorities are expected to co-operate fully and communicate properly. In the circumstances where individuals may need care and support from the second authority (e.g. in the event of unforeseen and urgent circumstances such as provider failure) such care **must** be provided without delay (arrangements to recoup costs can always be made subsequently).

Cross-border residential care placements

12. Authorities **should** follow the following broad process for making cross-border residential care placements. Authorities may wish to adapt this process to fit their needs; but in general, authorities should aim to follow, as far as possible, the processes set out below.

13. Authorities may wish to designate a lead official for information and advice relating to cross-border placements and to act as a contact point.

14. These steps **should** be followed whenever a cross-border residential placement is arranged by an authority, regardless of whether it is paid for by that authority or by the individual.

Step One: Arranging to meet an individual's assessed care needs

15. A need for a cross-border residential care placement will be determined by the local authority, in partnership with the individual concerned, as part of the process of deciding how an individual's assessed needs can best be met.

16. Authorities **should**, when assessing an individual's social care needs and deciding how those needs can best be met, establish what support networks (e.g. friends and family) the individual concerned has in their current place of residence⁸. In discussions with the individual and other relevant parties, enquiries **should** be made as to whether a support

⁷ Local authorities in England must have regard to the views, wishes, feelings and beliefs of the individual in certain circumstances – see the duty on England local authorities under clause 1(3) of the Care Act.

⁸ Cross border placements could occur where a person is living at home or where they are already living in residential care accommodation.

network exists elsewhere. Alternatively, the individual (or their family or friends) may proactively raise a desire to move to an area with a greater support network⁹ or to move to an area for other reasons.

17. Authorities **should** give due consideration as to how to reflect cross-border discussions with the individual in the care planning process.
18. Where it emerges that residential care in a different territory of the UK may be appropriate for meeting the person's needs, the authority **should** inform the individual concerned (and/ or their representative) of the potential availability of a cross-border placement if the individual (and/ or their representative) has not already raised this themselves.
19. Should the individual wish to pursue the potential for a cross-border placement, the authority will need to consider carefully the pros and cons. Questions the authority may wish to address could include:
 - Would the support network in the area of the proposed new placement improve (or at least maintain) the individual's well-being?
 - What effect might the change of location have on the individual's well-being? How well are they likely to adapt to their new surroundings?
 - Is the individual in receipt of any specialist health care? Will the locality of the proposed new placement allow for the satisfactory continuation of this treatment?
 - Where the individual lacks the mental capacity to decide where to live, who is the individual's representative, and how should the representative be consulted?¹⁰
20. With the permission of the individual concerned (or their representative), the authority **should** approach the friends and/ or family of the individual concerned who are resident in the area of the proposed new placement (and, any friends and/ or family in the area of their current residence) to seek their views of the perceived benefits of the placement and any concerns they may have.
21. Should a cross-border placement still appear to be in the interests of the individual's well-being, the authority **should** take steps to investigate which providers in the proposed new placement area exist

⁹ See clause 9(5) of the Care Act as to the duties on English local authorities in relation to the assessment of adults' needs for care and support. This includes a duty to involve the adult, any person whom the adult asks the authority to involve, or where the adult lacks capacity to ask the authority to involve any person who appears to the authority to be interested in the adult's welfare. English authorities **must** also consider whether and, if so, to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes the adult wishes to achieve.

¹⁰ In England, local authorities are obliged to involve such person in carrying out needs assessments, under clause 9(5) of the Care Act 2014.

and which are likely to be able to meet the needs of the individual. The authority **should** conduct all necessary checks and exercise due diligence as it would with any other residential care placement.

22. In preparing a care and support plan, authorities **should** (and in England **must**) involve the individual, any carer of the individual, and any person whom the individual asks the authority to involve or, where the individual lacks capacity to ask the authority to involve others, any person who appears to the authority to be interested in the individual's welfare. In involving the individual, the authority should take all reasonable steps to reach agreement with the individual about how the authority should meet the needs in question. When reviewing a care and support plan for an adult aged 65 or over local authorities must make arrangements to ensure that the individual or their carer or representative (where appropriate) is an active participant in the review.
23. The individual **should** be kept informed and involved throughout the process. Their views on suitable providers **should** be sought and their agreement achieved before a final decision is made. Consideration should be given to the benefits of advocacy in supporting the individual to express their wishes.
24. The individual **should** also be informed of the likelihood of the first authority giving notification of the placement to the second authority, seeking that authority's assistance with management of the placement or with discharge of other functions, for example reviews, and of what this would involve. Where, for example, this would involve the sharing of information or the gathering of information by the second authority on behalf of the first, (see next section) the individual **should** be informed of this at the outset and their consent sought.
25. Authorities **should** strive to offer people a choice of placements.

Step Two: Initial liaison between 'first' and 'second' authority

26. Once the placement has been agreed in principle (with the individual concerned and/ or their representative) and the authority has identified a potential provider they **should** immediately contact the authority in whose area the placement will be made.
27. The first authority **should**:
- notify the second authority of their intention to make a cross border residential care placement
 - provide a provisional date on which they intend for the individual concerned to commence their placement
 - provide the second authority with details of the proposed residential care provider

- seek that authority's views on the suitability of the residential accommodation.
28. The initial contact can be made by telephone, but **should** be confirmed in writing.
 29. The second authority has no power to 'block' a residential care placement into its area as the first authority contracts directly with the provider. In the event of the second authority objecting to the proposed placement, all reasonable steps **should** be taken by the first authority to resolve the issues concerned before making the placement.
 30. Following the initial contact and any subsequent discussions (and provided no obstacles to the placement taking place have been identified) the first authority **should** write to the second authority confirming the conclusions of the discussions and setting out a timetable of key milestones up to the placement commencing.
 31. The first authority **should** inform the provider that the placement is proposed – in the same way as with any residential care placement. The first authority **should** ensure that the provider is aware that this will be a cross-border placement.
 32. The first authority **should** contact the individual concerned and/ or their representative to confirm that the placement can go ahead and to seek their final agreement. The first authority **should** also notify any family/ friends that the individual has given permission and/ or requested be kept informed.
 33. The first authority **should** make all those arrangements that it would normally make in organising a residential care placement in its own area.

Step Three: arrangements for ongoing management of a placement

34. A key necessity is for the first authority to consider with the second authority, arrangements for the on-going management of the placement and assistance with the performance of relevant care and support functions.
35. The first authority will retain responsibility for the individual and the management and review of their placement. In this regard, the authority's responsibilities to the individual are no different than they would be if the individual was placed with a provider in the authority's own area.
36. However, it is recognised that the practicalities of day-to-day management of a placement potentially hundreds of miles distant from the authority may prove difficult.

37. As such, the first authority may wish to make arrangements for the second authority to assist with the day-to-day placement management functions, for example where urgent in-person liaison is required with the provider and/ or individual concerned, or with regular care reviews which are for the first authority to perform (in accordance with its statutory obligations)¹¹, but with which the second authority may be able to assist (e.g. by gathering information necessary for the review and passing this to the first authority to make a decision).
38. It **should** be made clear that ultimate responsibility for exercising the functions remains with the first authority (they are obtaining assistance with the performance of these functions, or, where applicable, authorising the exercise of functions on their behalf).
39. Any such arrangement **should** be detailed in writing – being clear as to what role the second authority is to play and for how long. Clarity should also be provided on the regularity of any reporting to the first authority and any payment involved for services provided by the second authority.

Step Four: Confirmation of placement

40. When the placement has been confirmed, the first authority **should** notify the second authority and detail in writing all the arrangements made with the second authority for assistance with on-going placement management and other matters. The first authority **should** also confirm the date at which the placement will begin.
41. The second authority **should** acknowledge receipt of these documents/information and give its agreement to the arrangements in writing.
42. The first authority **should** provide the individual concerned and/ or their representative with contact details (including whom to contact during an emergency) for both the first and second authority. If required, it is expected that the first authority will be responsible for organising suitable transport, and for the costs of it, to take the individual and their belongings to their new placement.
43. As would be the case normally, the first authority will normally be responsible for closing off previous placements or making other necessary arrangements regarding the individual's prior residence.

Other issues to be considered during the organisation of a placement

Timeliness of organising and making a placement

¹¹ See clause 27 of the Act as to the review of care and support plans by English local authorities.

44. Steps one to four **should** be conducted in a timely manner and the time taken **should** be proportionate to the circumstances.

Self-arranged placements

45. This guidance does not apply in relation to individuals who arrange their own care. Individuals who arrange and pay for their own care will normally become ordinarily resident in and/or the responsibility of the area to which they move. This guidance does apply to individuals who pay for their own residential care where that care is arranged by an authority.

Issues that may arise once a placement has commenced

Where the individual requires a stay in NHS accommodation

46. Should the individual placed cross-border need to go into NHS accommodation for any period of time then this stay will not interrupt the position regarding ordinary residence or responsibility deemed under Schedule One.

47. If, while the individual is in hospital, a 'retention' fee is payable to the care provider to ensure the individual's place is secured, this will be the responsibility of the first authority.

Where the individual requires NHS funded nursing care

48. Should the individual being placed require NHS-funded nursing care, the arrangements for delivering this **should** be discussed between the first authority, the NHS body delivering the care, the NHS body funding the care and the residential care provider prior to the placement commencing. Early (indeed advance) engagement with the NHS in such circumstances is important in ensuring smooth and integrated provision of services in cross-border placements.

49. Where the need for nursing care becomes evident after the placement has commenced, the relevant authorities **should** work together to ensure this is provided without delay.

50. The four administrations of the UK have reached separate bilateral agreements as to which administration shall bear the cost of NHS funded nursing care required for individuals placed cross border into residential care.

51. In the event of a cross border placement between England and Wales (in either direction), the second authority's health service will be responsible for the costs of NHS nursing care. However, in the event of a cross-border placement between Wales and Scotland, Wales and Northern Ireland, or between Scotland and Northern Ireland, the first

authority's health service will retain responsibility for the costs of NHS nursing care.¹²

Where the individual's care needs change during the placement

52. In the event that an individual's care needs change during the course of the placement, these should be picked up in the course of a review and the care management plan amended as needed.
53. The first authority retains responsibility for review and amendment of the individual's care package, although it may have agreed with the second authority that the latter will assist it in certain ways. In this case, clarity and communication will be important as to each authority's roles.
54. If the complaint relates to the care provider, it should normally be made to the provider in the first instance and dealt with according to the complaints process of the provider as governed by the applicable legislation, which will normally be the legislation of the administration into which the individual has been placed.
55. If the complaint relates to NHS care, it should be dealt with according to the legislation governing such complaints in the relevant territory of the UK.

Complaints regarding the first authority should be dealt with by the first authority in accordance with the relevant legislation of that territory of the UK, as should complaints regarding the individuals' care package. Complaints regarding the second authority should be dealt with by the second authority.

If referral to the health ombudsman is necessary this should be made to the ombudsman with responsibility for the provider or authority that is the subject of the complaint. See the subsequent section for how to deal with a dispute that might arise between two or more local authorities.

Reporting arrangements

There is no legal requirement for local authorities to notify national authorities that a cross-border placement has taken place. However, as UK-wide cross-border placements will generally be a new occurrence, it will be sensible to record the number of placements occurring to best inform future application of

¹² In the event of cross border placements between England and Scotland or between England and Northern Ireland (in either direction) the health service of the country of the first authority will be responsible for nursing costs. (In England therefore, the individual's responsible Clinical Commissioning Group will pay the costs. The NHS standing rules have been amended to make this responsibility clear therefore individual CCG consent is not required but the CCG **should** be informed of the arrangements being made and of the expected costs they are now likely to incur.)

the policy. Therefore, authorities **should** record the number of placements made into their area from other territories of the UK and vice versa.

Disputes between authorities

If authorities have regard to and apply the suggested process and procedures outlined above and, more importantly, if the first and second authority work together in a spirit of reciprocity and cooperation and promptly communicate in order to ensure matters go smoothly, then there should be no need for dispute resolution. A dispute is most likely to occur because of lack of communication or following a communication breakdown/ misunderstanding between first and second authority during the process of arranging the placement.

56. The four administrations of the UK have worked together on the contents of specific regulations governing the process of resolving a dispute. These regulations cover all disputes that arise about the application of paragraphs 1 to 4 of Schedule 1 to the Act (general non-transfer of responsibility in the case of placements).

57. These regulations under Schedule 1 state:

- A dispute **must not** be allowed to prevent, interrupt, delay or otherwise adversely affect the meeting of an individual's social care needs¹³.
- The authority in whose area the individual is residing at the time the dispute arises is the lead authority for the purposes of duties relating to coordination and management of the dispute.

In the event of a dispute between two authorities where the individual is living in the area of one of those authorities when the dispute is referred, the Minister/ Northern Ireland Department (NID) in whose jurisdiction that area lies would determine the dispute. In the event of other disputes between authorities, the Ministers/NID in whose jurisdiction those authorities sit would decide between themselves as to who would determine the dispute

58. Before a dispute is referred to the relevant individual, the local authorities concerned must take a number of steps.

59. The lead authority **must**:

- co-ordinate the discharge of duties by the authorities in dispute
- take steps to obtain relevant information from those authorities
- disclose relevant information to those authorities

60. Authorities in dispute **must**:

- take all reasonable steps to resolve the dispute between themselves
- co-operate with each other in the discharge of their duties.

¹³ See further meaning of 'needs' in relation to the four territories under the regulations.

61. Each authority in dispute **must**:
- Engage in constructive dialogue with other authorities to bring about a speedy resolution
 - Comply with any reasonable request made by the lead authority to supply information
62. The Regulations specify the contents of a dispute referral as follows.
63. When a dispute is referred, the following **must** be provided:
- a letter signed by the lead authority stating that the dispute is being referred
 - a statement of the facts
 - copies of related correspondence.
64. The statement of facts **must** include:
- details of the needs for care and support of the individual to whom the dispute relates
 - which authority, if any, has met those needs, how they have been met and the relevant statutory provision
 - an explanation of the nature of the dispute
 - any other relevant steps taken in relation to the individual
 - details of the individual's place of residence and any former relevant residence
 - chronology of events leading up to the dispute
 - details of steps authorities have taken to resolve dispute
 - where the individual's mental capacity is relevant, relevant supporting information.
65. The authorities in dispute may make legal submissions and if they do, they **must** send a copy to the other authorities in dispute, and provide evidence that they have done so.
66. The Responsible Person (i.e. Minister or Northern Ireland Department) to whom the dispute has been referred **must**
- consult other responsible persons (i.e. Ministers or NI Department) in determining the dispute
 - notify those responsible persons of their determination.

Provider failure

67. In the event that a provider with which cross-border arrangements for an individual have been made or funded fails and is unable to carry on the care activity as a result, the authority in whose area that individual's social care needs were being met has duties to ensure those needs continue to be met for so long as that authority considers it necessary. In the case of residential placements, as the first authority will normally continue to have overall responsibility, close communication and co-operation between the first and second authority will be important

throughout. The temporary duty to meet needs in the event of provider failure will apply to authorities in England and Northern Ireland but is not expected to apply to local authorities in Wales until April 2016.

68. In the event of provider failure in Scotland, local authorities are required to perform duties provided for under Part 2 of the Social Work (Scotland) Act 1968 as specified in regulations made by the Secretary of State under paragraphs 1(6) and (7), 2(9) and (10), and 4(5) and (6) of Schedule 1 of the Care Act 2014.
69. The Act enables the second authority (where this is an authority in England, Wales or Northern Ireland) to recover costs from the authority which made or funded the arrangements. This power will be commenced in relation to local authorities in Wales at the same time as the temporary duty is commenced in relation to them.
70. If a dispute later emerges, for example regarding costs incurred as a result of the provider failure situation, then the Schedule 1 dispute regulations described above will apply (where this concerns duties on authorities in England, Wales or Northern Ireland).

Potential future cross-border arrangements

71. Schedule 1 makes provision for regulation-making powers with respect to applying cross-border principles to direct payments and/ or other types of accommodation which are not arranged by a local authority.
72. The UK Government and the Devolved Administrations will be keeping under review the possibility of exercising these regulation-making powers, in light of the implementation of residential cross-border placements and policy developments across all UK administrations.

Annex 3

Other relevant Guidance, Codes of Practice and additional Information

Social Services and Well-being (Wales) Act 2014 as passed provides provisions to reform social care law, to make provisions about improving the well-being outcomes for people who need care and support and carers who need support.

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5664>

Housing (Wales) Act 2014 provides details of the new duties on local authorities in respect of providing prevention focused homelessness services, new registration and licensing requirements for private sector landlords, powers for local authorities to increase council tax charges on second homes, and requirements to meet accommodation needs of gypsies and travellers. The Act will come into effect in April 2015.

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=8220>

Care Act 2014 – Section 76 Prisoners and persons in approved premises etc. sets out provisions within the Care Act that provide care and support for adult prisoners in the secure estate in England (this includes adults in approved premises and other bail accommodation, as well as people aged over 18 years in young offender institutions, secure children's homes and secure training centres).

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

Mental Health Measure (Wales) 2010 sets out arrangements to help people with mental health problems by:

- improving access to primary mental health support services
- improving care and treatment planning for people using secondary mental health services

<http://wales.gov.uk/topics/health/nhswales/healthservice/mental-health-services/measure/?lang=en>

Policy Implementation Guidance for Mental Health Services for Prisoners 2014 sets out a vision for mental health services for prisoners and identifies some issues that will need to be addressed to get there.

<http://wales.gov.uk/topics/health/nhswales/healthservice/mental-health-services/?lang=en>

Legal Aid, Sentencing and Punishment of Offenders 2012 sets out provision about legal aid; provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; and to amongst other duties, to amend section 76 of the Criminal Justice and Immigration Act 2008 (self defence). Section 104 designates that a child who is remanded to youth

detention accommodation is to be treated as a child who is looked after by the designated authority.

<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

Criminal Justice and Immigration Act 2008 sets out further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to make further provision about the management of offenders; to amend the criminal law; and amongst other duties, makes further provision for combatting crime and disorder

<http://www.legislation.gov.uk/ukpga/2008/4/contents>

The Offender Rehabilitation Act 2014 extends statutory supervision in England and Wales to around 50,000 offenders with sentences of less than 12 months. These offenders will serve their whole sentence in a resettlement prison.

<http://www.legislation.gov.uk/ukpga/2014/11/contents/enacted>

Access to Justice – A multi-agency guidebook supporting the responsive and appropriate management of adults with a learning disability in the criminal justice system in Wales published in 2013. It is intended to support commissioners, planners and practitioners across health, social care and criminal justice services in Wales in improving service provision.

<http://www.wales.nhs.uk/sitesplus/888/page/67512>

The 'Wales Reducing Re-offending Strategy: 2014-2016' provides a vehicle through which collaborative working can be enhanced, thereby ensuring resources can be targeted to their maximum effect. A key objective within the Strategy is to put in place measures to ensure all offenders have access to health and social care services appropriate to their needs.

Policing and Crime Act 2009 – extends the mandate to formulate and implement a strategy to reduce reoffending to local authorities as a 'responsible authority within Community Safety Partnerships (CSPs). This duty requires local areas to fully understand offender profiles, the ways in which services can address the needs of offenders and critically, where resources should be targeted to achieve a reduction in reoffending.