

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF STATE
AND THE SCOTTISH MINISTERS**

**RELATING TO THE DETERMINATION OF CROSS-BORDER ORDINARY
RESIDENCE DISPUTES**

1. The Secretary of State and the Scottish Ministers enter into the following memorandum of understanding for deciding whether cross border ordinary residence disputes between local authorities under either the National Assistance Act 1948 or the Social Work (Scotland) Act 1968 are to be determined by the Secretary of State or by the Scottish Ministers.

2. In this memorandum –

“a cross-border dispute” means an ordinary residence dispute involving at least one local authority in Scotland and at least one local authority in England;

“an ordinary residence dispute” means a question arising under the Social Work (Scotland) Act 1968, or the National Assistance Act 1948 as to a person’s ordinary residence;

“a local authority in Scotland” means a council constituted under section 2 of the Local Government (Scotland) Act 1994;

“a local authority in England” means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970.

3. The Secretary of State will determine a cross-border dispute where the dispute relates to a question of ordinary residence arising under Part 3 of the National Assistance Act 1948 and a local authority in England is seeking to recover expenditure from a local authority in Scotland.

4. The Scottish Ministers will determine a cross-border dispute where the dispute relates to a question of ordinary residence arising under section 86 of the Social Work (Scotland) Act 1968 and a local authority in Scotland is seeking to recover expenditure from a local authority in England.

5. Where—

(a) neither a local authority in Scotland nor a local authority in England is seeking recovery of expenditure, as neither authority has yet accepted provisional responsibility for the provision of services; or

(b) local authorities in both Scotland and England are seeking recovery,

the Secretary of State and Scottish Ministers will, within 14 days of receipt of sufficient information to make a decision, agree who will determine the dispute.

6. In the case of a dispute arising in terms of either paragraph 3, 4 or 5 above, the Scottish Ministers and the Secretary of State agree that each will—

(a) notify the other immediately on being made aware of the dispute; and

(b) within 14 days of receipt of sufficient information to make a decision as to who should determine the dispute, agree in accordance with this memorandum who will determine the dispute.

7. If agreement has been reached in terms of paragraph 6(b) that the Scottish Ministers shall determine the dispute, the Scottish Ministers must—

- (a) consult the Secretary of State prior to determining the dispute, and take the views of the Secretary of State into account; and
- (b) notify the Secretary of State of the outcome of the determination prior to notifying the local authorities involved in the dispute,

and such determination should be made within three months of agreement being reached in terms of paragraph 6(b) unless the Scottish Ministers and the Secretary of State agree a longer or shorter period would be appropriate in a particular dispute.

8. If agreement has been reached in terms of paragraph 6(b) that the Secretary of State shall determine the dispute, the Secretary of State must—

- (a) consult the Scottish Ministers prior to determining the dispute, and take the views of the Scottish Ministers into account; and
- (b) notify the Scottish Ministers of the outcome of the determination prior to notifying the local authorities involved in the dispute,

and such determination should be made within three months of agreement being reached in terms of paragraph 6(b) unless the Secretary of State and the Scottish Ministers agree a longer or shorter period would be appropriate in a particular dispute.

9. Both the Secretary of State and the Scottish Ministers agree to assist the other in making a determination by providing such information as may be requested, which may include previous determinations with identifying information removed.

10. This memorandum of understanding has effect from ¹⁶December 2011 and shall continue to apply until one party notifies the other that it shall cease to apply or both parties agree that it shall cease to apply.



Luisa Stewart
Member of the Senior Civil Service
On behalf of the Secretary of State
Date:

16th December 2011



Geoff Huggins
Member of the Senior Civil Service
On behalf of the Scottish Ministers
Date:

13 / XII / 2011