



**Note following the Court of Session judgment in the matter of Milton Keynes v Scottish Ministers<sup>i</sup>**

On 17 November 2015 the Court of Session dismissed a petition by Milton Keynes Council for judicial review of the determination by the Scottish Ministers of the ordinary residence of an individual who moved from England to Scotland, in case [2015] CSOH 156.

The case turns on the issue of the correct construction to be placed on the term “ordinary residence” for the purposes of section 86 of the Social Work (Scotland) Act 1968.

The Court of Session upheld the decision of the Scottish Ministers that the adult, who lacked mental capacity and moved under private arrangements, remained ordinarily resident in England in circumstances where there was no appointed welfare guardian or attorney who gave legal authority for her change of residence.

The Department of Health is currently considering its position in the light of the judgment and further guidance will be issued in due course.

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<sup>i</sup> Judicial Review of a decision, dated 26 March 2015 of the Scottish Ministers determining the ordinary residence of JR <https://www.scotcourts.gov.uk/search-judgments/judgment?id=9e48f7a6-8980-69d2-b500-ff0000d74aa7>