

## Local Authority Social Services Act 1970

# The Ordinary Residence Disputes (Mental Capacity Act 2005) Directions 2010

The Secretary of State for Health makes the following directions in exercise of the power conferred by section 7A of the Local Authority Social Services Act 1970<sup>1</sup>.

### Commencement and interpretation

1. (1) These directions come into force on 19th April 2010 and are addressed to every local authority in England.

(2) In these directions –

“the 2005 Act” means the Mental Capacity Act 2005<sup>2</sup>;

“lead local authority” means the local authority which is acting, in accordance with regulation 18 of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008<sup>3</sup> (arrangements where there is a question as to ordinary residence), as the supervisory body in relation to P;

“local authorities in dispute” means the local authorities which are party to an ordinary residence dispute;

“ordinary residence dispute” means any question arising under Schedule A1 to the 2005 Act (hospital and care home residents: deprivation of liberty) in relation to the ordinary residence of P; and

“P” means a relevant person within the meaning of paragraph 7 of Schedule A1 to the 2005 Act (relevant person etc).

(3) References in these directions to the date on which an ordinary residence dispute arises are references to the first date on which a written communication is sent by one of the local authorities in dispute to one or more of the other authorities in dispute, notifying that other authority or those other authorities that it does not accept that it is liable for acting as the supervisory body in relation to P.

### Steps to be taken before referring a dispute to the Secretary of State

2. (1) Before they may refer an ordinary residence dispute to the Secretary of State for determination in accordance with paragraph 183(3) of Schedule A1 to the 2005 Act, the local authorities in dispute must ensure that they have taken all reasonable

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<sup>1</sup> 1970 c. 42. Section 7A was inserted by section 50 of the National Health Service and Community Care Act 1990 (c. 19). For the definition of “social services functions”, see section 1A of, and Schedule 1 to, the 1970 Act.

<sup>2</sup> 2005 c. 9. Schedule A1 was inserted by Schedule 7 to the Mental Health Act 2007 (c. 12).

<sup>3</sup> S.I. 2008/1858.

steps to resolve the dispute between themselves, and in particular that they have complied with the following provisions of this direction.

(2) As soon as reasonably practicable after the date on which the dispute arises, the lead local authority must identify all the local authorities in dispute and co-ordinate discussions between those authorities in an attempt to resolve the dispute.

(3) As soon as reasonably practicable after the date on which the dispute arises, each local authority in dispute must nominate a named contact within the authority who will take the lead in discussions about the dispute on behalf of the authority.

(4) Each local authority in dispute must engage in constructive dialogue with the others, with a view to the speedy resolution of the dispute.

(5) The lead local authority must gather from the other local authorities in dispute any information which may help to resolve the dispute and those other authorities must comply without delay with any reasonable request by the lead local authority to provide such information.

(6) The lead local authority must provide to P, or P's representatives, such information as appears to it to be appropriate about progress in resolving the dispute.

### **Stage at which dispute must be referred to Secretary of State**

3. If the local authorities in dispute cannot resolve the ordinary residence dispute within four months of the date on which the dispute arose, they must refer the dispute to the Secretary of State in accordance with direction 4.

### **Documents to be sent with referral to Secretary of State**

4. (1) The local authorities in dispute must send to the Secretary of State the following documents within 28 days of the expiry of the period mentioned in direction 3 –

- (a) a covering letter signed by the lead local authority requesting the Secretary of State to determine the ordinary residence dispute;
- (b) a statement of facts signed by each of the local authorities in dispute which includes–
  - (i) details of the care home in which P is, is to be or was detained;
  - (ii) details of where P is residing and any former places of residence which are relevant to the ordinary residence dispute;
  - (iii) a chronology of relevant events leading up to the request for a determination of the dispute, including the date on which the dispute arose;

- (iv) details of the steps that the local authorities in dispute have taken to resolve the dispute themselves; and
  - (v) any other factual information which is relevant to the ordinary residence dispute; and
- (c) copies of all correspondence between the local authorities in dispute relating to the dispute.

(2) Each of the local authorities in dispute may in addition send to the Secretary of State legal submissions concerning the ordinary residence dispute.

(3) If a local authority in dispute sends legal submissions to the Secretary of State as described in paragraph (2), it must –

- (a) send these to the Secretary of State within 14 days of the date on which the documents referred to in paragraph (1) are sent; and
- (b) provide evidence that the submissions have been sent to the other local authority or authorities in dispute.

(4) The documents referred to in paragraphs (1) to (3) must be submitted to the Secretary of State at the following address –

Department of Health  
Dignity and Safety Policy Management Unit  
Social Care Policy and Innovation Division  
Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG.

(5) If, during the determination of the ordinary residence dispute by the Secretary of State, a local authority in dispute is asked to provide further information to the Secretary of State, that local authority must provide that information without delay.

.....  
Signed by authority of the Secretary of State for Health  
Member of the Senior Civil Service

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Date