Moving Between Areas: Inter-Local Authority and Cross-Border Issues Policy

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POLICY AWARENESS

People who need to know this policy in detail Operational teams and service providers
People who need to have a broad understanding of this policy Commissioners and Senior Managers
People who need to know that this policy exists Directors, Community Services and the general public

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</tr>
</tbody>
</table>
Contents

Introduction 4
Purpose 4
Explanation of Terms 5
Duties and Responsibilities 5
Ordinary Residence 5
Continuity of Care 11
Cross-Border Placements 14
Consultation, Approval and Ratification Process 18
Dissemination and Implementation 18
Monitoring Compliance 19
References and Supporting Documents 19
Policy Review 19
Appendices:

Appendix 1 Scenario: persons of no settled residence 20
Appendix 2 Case Study Cross-Border Placement 21
1. Introduction

It is critical to the operation of the care and support system that:

- Local Authorities understand for which people they are responsible and that people know who to contact when they need care and support.
- Local Authorities recognise that people with care and support needs may decide to move home just like anyone else and in some cases they may wish to be closer to a support network of friends and family in a different country of the UK form which they reside.

Staffordshire County Council (SCC) operates a series of integrated commissioning arrangements that bring together not only health and social care, but also establish clear connections with wider partners in housing, criminal justice, education and public health in order to facilitate coherent and connected actions to address the challenges facing Staffordshire people.

The duties and considerations in relation to moving between areas which include ordinary residence, continuity of care and cross-border placements is the responsibility of the relevant Local Authority. For persons living in Staffordshire or present in the area within the terms of the ordinary residence criteria then SCC is the responsible Local Authority. SCC both provides and has commissioned a range of operational partners to deliver the statutory requirements of the Care Act in line with the powers to delegate functions covered by this policy, including the requirement to ensure the arranging of independent advocacy.

The operational providers who are required to understand and implement this policy, and associated Statutory Guidance and Regulations are as follows:

- Staffordshire County Safeguarding Teams
- Staffordshire County Council Contact Services
- Staffordshire County Council Independent Futures
- Staffordshire County Council Families First
- Staffordshire County Council Emergency Duty Teams
- Staffordshire & Stoke on Trent Partnership NHS Trust
- South Staffordshire and Shropshire NHS Foundation Trust
- North Staffordshire Combined Healthcare NHS Trust

2. Purpose

The requirements for ‘moving between areas: inter-Local Authority and cross border issues’ are set under in the Care and Support Regulations 2014 for Ordinary Residence, Disputes Between Local Authorities, Continuity of Care and Cross- Border Placements and Business Failure. The Care Act 2014 Statutory Guidance Chapters 19, 20 and 21 also sets out the Local Authority responsibilities in relation to these provisions. This Policy aims to ensure that Staffordshire County Council (SCC) delivers against its duties in relation to ‘moving between areas’ and assists SCC in carrying out these duties effectively.

Access to legal advice should be sought as required for further advice and clarification in relation to any specific casework activity. This policy is designed primarily to provide an overview of guidance and regulations in relation to moving between areas. For example, ordinary residence is not a new concept, however, there have been in the past and will continue to be cases in which it is difficult to establish precisely where a person is ordinary resident.
The purpose of this policy is to assist staff in:

- Understand how to determine ordinary residence.
- Understanding what Local Authorities must take into account when they are planning the move with people to another Local Authority.
- Understand the Local Authority responsibilities with respect to placing individuals into care home accommodation in different territories in the UK.

3. Explanation of Terms

3.1 Ordinary residence

Ordinary residence is crucial in deciding which Local Authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is ordinarily resident in the area of the Local Authority is a key test in determining where responsibilities lie between Local Authorities for the funding and provision of care and support.

3.2 Cross-border placement

A placement of an individual into care home accommodation in one of the different territories of the UK (England, Scotland, Wales and Northern Ireland).

4. Duties and Responsibilities

The duties including levels of responsibility are outlines as follows:

4.1 Managers

Managers of all Social Care and Health services have responsibilities to ensure that all staff are made aware of the requirements of this policy.

4.2 Staff

All Social Care and Health staff have responsibilities to familiarise themselves with and act in accordance with the policy.

4.3 Legal Services

To provide further advice and clarification in relation to any specific casework activity.

5. Ordinary residence

5.1 Overview

Many of the Local Authority’s care and support responsibilities relate to the entire local population (for instance, in relation to information and advice or preventive services). However, when it comes to determining which individuals have needs which a Local Authority is required to meet, the Local Authority is only required to meet needs in respect of an adult who is ordinarily resident in their area (or is present there but has no settled residence.


Ordinary residence is crucial in deciding which Local Authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is ordinarily resident in the area of the Local Authority is a key test in determining where responsibilities lie between Local Authorities for the funding and provision of care and support.

This policy should be read in conjunction with Annexes H1-H8 of the Care and Support Statutory Guidance, which provides further detailed guidance on specific situations and circumstances which may arise, and where the question of ordinary residence may be unclear. This guidance should be followed.

5.2 How does ordinary residence affect the provision of care and support?

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, which determines which Local Authority would be responsible for meeting needs, 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, however, the responsible Local Authority will be the one where the adult for whom they care is ordinarily resident.

Local Authorities must determine whether an individual is ordinarily resident in their area following the needs or carer’s assessment, and after determining whether the person has eligible needs. Determining ordinary residence is a key additional requirement in establishing whether the duty to meet needs under section 18 or 20 of the Act is triggered, so this must be taken into consideration when deciding if the Local Authority is to meet the person’s needs.

The determination of ordinary residence must not delay the process of meeting 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.

5.3 How to determine ordinary residence

The Local Authority’s responsibility for meeting a person’s eligible needs under the Care Act is based on the concept of ordinary residence. However, there is no definition of ordinary residence in the Act. Therefore, the term should be given its ordinary and natural meaning.

In most cases, establishing the person’s ordinary residence is a straightforward matter. However, this is not always the case. 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 must 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. For people who lack capacity to make decisions about their accommodation, an alternative approach is appropriate because a person’s lack of mental capacity may mean that they are not able to voluntarily adopt a particular place.

Local Authorities should in particular 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.

5.4 Cases where a person lacks capacity

All issues relating to mental capacity should be decided with reference to the Mental Capacity Act 2005 (the 2005 Act). Under this Act, it must 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 interest’s 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 sets out how to work out the best interests of a person who lacks capacity and provides a checklist of factors for this purpose.

Where a person lacks the capacity to decide where to live and uncertainties arise about their place of ordinary residence, the test in Shah will not assist since it requires the voluntary adoption of a place.

In the case of a person whose parents are deceased, people who have become ordinarily resident in an area and then lost capacity or have limited contact with their parents, the approach known as Vale 2 is appropriate to determine ordinary residence. This involves considering a person’s ordinary residence as if they had capacity. All the facts of the
person’s case must be considered, including physical presence in a particular place and the nature and purpose of that presence but without requiring the person have voluntarily adopted the place of residence.

5.5 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.

Sections 18 and 20 of the Care Act make clear that Local Authorities have a duty to meet the eligible needs of people if they are present in its area but of no settled residence.

In this regard, people 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 scenario example of persons of no settled residence can be found in Appendix 1.

A Local Authority may conclude that a person arriving from abroad is of no settled residence, including those people who are returning to England after a period of residing abroad and who have given up their previous home in this country. For more details on people returning to England after a period of living abroad, see Annex H6 (British citizens resuming permanent residence in England after a period abroad).

5.6 Ordinary residence when arranging accommodation in another area

There may be some cases where the Local Authority considers it appropriate for the person’s care and support needs to be met by the provision of accommodation in the area of another authority, in premises which could be a care home or premises that are designated (whether or not specifically designed or adapted for the purpose) for occupation by adults with needs for care and support, to help enable them to adjust to independent living or to live independently.

In addition to their involvement in the planning process, the person will also have a right to make a choice about their preferred accommodation (see chapter 8 and Annex A about choice of accommodation). This right allows the person to make a choice about a particular individual provider, including where that provider is located. Provided that certain conditions are met, the Local Authority must arrange for the preferred accommodation. Many people will either require or benefit from the support of an advocate, either under the Care Act or under the Mental Capacity Act. The role of the advocate is to support and represent the person. This may include helping them to make, or to express, a choice. It may include representing their interests when they are unable to engage with the care planning process.

This will mean that Local Authorities will in some circumstances arrange accommodation that is located in a different area. In any such case, it should be clear which Local Authority is responsible for meeting the person’s needs in the future. Section 39 of the Care Act, and the regulations made under it set out what should happen in these cases, and specify which Local Authority is responsible for the person’s care and support when the person is placed in another authority’s area. Together, these create the principle that the person 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 person’s needs.

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

The regulations explicitly set out three types of accommodation:

- nursing homes/care homes – accommodation which includes either nursing care or personal care;
- supported living/extra care housing; this is either;

- specialist or adapted accommodation: this means accommodation which includes features that have been built in or changed to in order to meet the needs of adults with care and support needs. This may include safety systems and features which enable accessibility and navigation around the accommodation and minimise the risk of harm, as appropriate to the individual; or
- accommodation which is intended for occupation by adults with care and support needs, in which personal care is also available, usually from a different provider.
- shared lives schemes: accommodation which is provided together with care and support for an adult by a shared lives carer, approved by the scheme, in the shared lives carer’s home under the terms of an agreement between the adult, the scheme the shared lives carer and any Local Authority responsible for making the arrangement. The shared lives carer will normally be providing personal care but they will not need to provide it in every case.

Where an adult has needs which can only be met by the provision of one of the specified 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 eligible needs, and responsibility does not transfer to the authority in whose area the accommodation is physically located. However, in circumstances where the person moves to accommodation of their own volition, without the Local Authority making the arrangements, their ordinary residence would be where the new accommodation is situated.

5.7 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, the Care 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 Northern Ireland, Scotland and Wales. If a person who is ordinarily resident in England goes into hospital in Scotland,
Wales or Northern Ireland, their ordinary residence will remain in England (in the Local Authority in which they resided before going into hospital) for the purposes of responsibility for the adult’s care and support.

5.8 Mental health after-care

Under section 117 of the Mental Health Act 1983, Local Authorities together with Clinical Commissioning Groups (CCGs) have a joint duty to arrange the provision of mental health after-care services for people who have been detained in hospital for treatment under certain sections of the 1983 Act. After-care services must have both 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 after-care 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 ordinarily resident in another area after leaving hospital.

Although any change in the patient’s ordinary residence after discharge will affect the Local Authority responsible for their social care services, it will not affect the Local Authority responsible for commissioning the patient’s section 117 after-care. As amended by the Care Act 2014, section 117 provides that, if a person is ordinarily resident in Local Authority area (A) immediately before detention under the 1983 Act, and moves on discharge to Local Authority area (B) and moves again to Local Authority area (C), Local Authority (A) will remain responsible for providing or commissioning their after-care. However, if the patient, having become ordinarily resident after discharge in Local Authority area (B) or (C), is subsequently detained in hospital for treatment again, the Local Authority in whose area the person was ordinarily resident immediately before their subsequent admission (Local Authority (B) or (C)) will be responsible for their after-care when they are discharged from hospital.

If, however, the patient’s ordinary residence immediately before being detained cannot be established, the Local Authority responsible for commissioning the patient’s aftercare will be the one for the area in which the patient was resident immediately before being detained under the 1983 Act. Only if that cannot be established, either, will the responsible Local Authority be the one for the area to which the patient is sent on discharge. However, Local Authorities should only determine that a person is not resident anywhere as a last resort.

5.9 Resolving ordinary residence and continuity of care disputes

In the majority of cases, determining ordinary residence should be straightforward. However, there will be occasions where a person’s residency status is more complicated to establish.

A question as to a person’s ordinary residence can only arise where two or more Local Authorities are in dispute about the place of ordinary residence of a person. In such a case, the authorities may apply for a determination to the Secretary of State or appointed person. Where the Local Authorities concerned 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 Secretary of State or an appointed person for a determination.
The Care and Support (Disputes Between Local Authorities) Regulations 2014, set out the procedures Local Authorities must follow when disputes arise between Local Authorities regarding a person’s ordinary residence. When a dispute between two or more Local Authorities occurs, Local Authorities must take all reasonable steps to resolve the dispute between themselves. It is critical that the person does not go without the care they need, should Local Authorities be in dispute. The Local Authority that is meeting the needs of the adult or the carer on the date that the dispute arises must continue to do so until the dispute is resolved. If no Local Authority is currently meeting the person’s needs, then the Local Authority where the person is living or is physically present must accept responsibility until the dispute is resolved. The Local Authority which has accepted provisional responsibility is referred to as ‘the lead authority’.

6. Continuity of Care

6.1 Overview

People with care and support needs may decide to move home just like anyone else, such as to be closer to family or to pursue education or employment opportunities, or because they want to live in another area. Where they do decide to move to a new area and as a result their ordinary residence status changes, it is important to ensure that care and support is in place during the move, so the person’s wellbeing is maintained.

In circumstances where a person is receiving Local Authority support and moves within their current Local Authority (for example, moving between homes in the same area), they would remain ordinarily resident within that authority and it must continue to meet their needs.

Where the person chooses to live in a different Local Authority area, the Local Authority that is currently arranging care and support (the ‘first authority’) and the authority to which they are moving (the ‘second authority’) must work together to ensure that there is no interruption to the person’s care and support.

The continuity of care chapter within the Care and Support Statutory Guidance sets out the process Local Authorities must follow to ensure that the person’s care and support continue, without disruption, during and after the move. These procedures also apply where the person’s carer is receiving support and will continue to care for adult after they have moved.

The aim of this process is to ensure that the person with care and support needs will be able to move with the confidence that arrangements to meet their needs will be in place on the day of the move. Local Authorities are expected to achieve continuity of care by ensuring that the second authority has completed a needs assessment and care and support plan of the individual prior to the day of the move. It is possible that the second Local Authority might be unable to complete a needs assessment prior to the day of the move due to the logistics of assessing a person a long distance away or because they want to assess the adult in their new home. If the second authority has not carried out the assessment prior to the move, it must continue to meet the needs and take into account outcomes identified in the adult’s current care and support plan until it has carried out its own assessment.
6.2 Making an informed decision to move to a different Local Authority

When contemplating the possibility of moving, an adult may want to find out information about the care and support available in one or more authorities. Local Authorities may already make much of this information publicly available in accordance with its general duties under the Care Act, and they should provide any extra information requested by the adult and where relevant, their carer. Local Authorities can provide the adult and their carer with relevant information or advice to help inform their decision. When providing relevant information and advice, Local Authorities should guard against influence over the final decision.

6.3 Confirming the intention to move

The continuity of care process starts when the second authority is notified of the adult’s intention to move. Local Authorities may find out about the person’s intention to move from the individual directly or through someone acting on their behalf, who may contact either the first authority or the second authority to tell them of their intentions. If the person has approached the first authority and informed them of their intention to move, the first authority should make contact with the second authority to tell them that the person is planning on moving to their area.

When the person has confirmed their intention to move with the second authority, the authority must assure itself that the person’s intention is genuine. This is because the duties in the Act flow from this point. To assure itself that the intention is genuine, the second authority should:

- establish and maintain contact with the person and their carer to keep abreast of their intentions to move;
- continue to speak with the first authority to get their view on the person’s intentions;
- ask if the person has any information or contacts that can help to establish their intention.

When the second authority is satisfied that the person’s intentions to move are genuine, it must provide the adult and the carer if also intending to move, with accessible information about the care and support available in its area.

6.4 Supporting people to be fully involved

The person may request assistance from either the first or second authority in helping them understand the implications of their move on their care and support, and the authority should ensure that they have access to all relevant information and advice. This should include consideration of the need for an independent advocate in helping the person to weigh up their options.

6.5 Preparing for the move

Once the second authority has assured itself that the adult’s and where relevant the carer’s intentions to move are genuine, it must inform the first authority. At this stage, both authorities should identify a named staff member to lead on the case and be the ongoing contact during the move. These contacts should make themselves known to the person and lead on the sharing of information and maintaining contact on progress towards arranging the care and support for the adult and support for the carer. These contacts should be jointly responsible for facilitating continuity of care within an acceptable timeframe, taking
into consideration the circumstances behind the adult’s intention to move, such as a job opportunity.

The second authority must provide the adult and carer with any relevant information that it did not supply when the person was considering whether to move.

When the first authority has been notified by the second authority that it is satisfied that the person’s intention to move is genuine, the first authority must provide it with:

- a copy of the person’s most recent care and support plan;
- a copy of the most recent support plan where the person’s carer is moving with them; and
- any other information relating to the person or the carer (whether or not the carer has needs for support), that the second authority may request.

The continuity of care provisions will not apply for people receiving services under children’s legislation. Where such a person has had a transition assessment but is moving area before the actual transition to adult care and support takes place, the first Local Authority should ensure that the second is provided with a copy of the assessment and any resulting transition plan. Similarly, where a child’s carer is having needs met by adult care and support in advance of the child turning 18 (following a transition assessment), the first Local Authority should ensure that the second is provided with a copy of the assessment and the carer’s support plan.

6.6 Assessment and care and support planning

The second authority must contact the adult and the carer to carry out an assessment and to discuss how arrangements might be made. The second authority should also consider whether the person might be moving to be closer to a new carer and whether that new carer would benefit from an assessment.

Throughout the assessment process, the first authority must keep in contact with the second authority about progress being made towards arranging necessary care and support for the day of the move. The first authority must also keep the adult and the carer informed and involved of progress so that they have confidence in the process. This should include involving them in any relevant meetings about the move.

The second authority should agree the adult's care and support plan and carer’s support plan, including any personal budget, in advance of the move to ensure that arrangements are in place when the person moves into the new area. This should be shared with the individuals before the move so that they are clear how their needs will be met, and this must also set out any differences between the person’s original plan and their new care and support or support plan. Such differences could arise where the range of services in one Local Authority differs from the range of services in another. The second authority must also explain to the adult or carer where there are any differences in their needs.

If the person also has health needs, the second authority should carry out the assessment jointly with their local CCG. Alternatively, if the CCG agrees, the second authority can carry out the assessment on its behalf.

Where the first authority has provided equipment, it should move with the person to the second authority where this is the person’s preference and it is still required and doing so is the most cost-effective solution. This should apply whatever the original cost of the item. In deciding whether the equipment should move with the person, the Local Authorities should
discuss this with the individual and consider whether they still want it and whether it is suitable for their new home. Consideration will also have to be given to the contract for maintenance of the equipment and whether the equipment is due to be replaced.

The second authority must provide the adult and the carer and anyone else requested with a copy of their assessments. This must include a written explanation where it has assessed the needs as being different to those in the care and support plan or the carer’s support plan provided by the first authority. The second authority must also provide a written explanation if the adult’s or carer’s personal budget is different to that provided by the first authority.

6.7 What happens if the second authority has not carried out an assessment before the day of the move?

The second Local Authority is generally expected to have carried out their needs assessment of the persons moving prior to the day of the move. However, there may be occasions where the authority has not carried out the assessments or has completed the assessments but has not made arrangements to have support in place. This might happen where the second authority wants to assess the person in their new home and consider if their needs have changed, for example because they have started a new job or are now in education, or they have moved to be closer to family.

Where the full assessment has not taken place prior to the move, the second authority must put in place arrangements that meet the adult’s or carer’s needs for care and support as identified by the first authority. These arrangements must be in place on the day of the move and continue until the second authority has carried out its own assessment and put in place a care and support plan.

7. Cross-border placements

7.1 Overview

In the production of a care and support plan, the authority and the individual concerned may reach the conclusion that the individual’s wellbeing is best achieved by a placement into care home in a different country of the UK. Schedule 1 to the Care Act sets out certain principles governing cross-border residential care placements.

As a general rule, responsibility for individuals who are placed in cross-border residential care remains with the first authority (the Local Authority which places the individual). This guidance sets out how the first and second authorities (the Local Authority into whose area the individual is placed) should work together in the interests of individuals receiving care and support through a cross-border residential placement.

Local Authorities in England making a cross-border placement should be aware that in general the duties specified in the Act, and this statutory guidance, apply to cross-border placements as they apply to placements within an authority’s own area. This guidance applies to cross-border placements of any duration.

Authorities should follow the following broad process for making cross-border residential care placements. The designated lead official for information and advice relating to cross-border placements in the County Council is the Commissioning Delivery Hub (Contracts) (carehometeam@staffordshire.gov.uk)
7.2 Cross-border placements, the process steps

The following process 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.

7.21 Step one: care and support planning

A need for a cross-border residential care placement will be determined as part of the overall care and support plan prepared by the authority, in partnership with the individual concerned.

Authorities should, in assessing care and support needs, establish what support networks (e.g. friends and family) the individual concerned has in their current place of residence. In discussions with the individual and other relevant parties, enquiries should be made as to whether a support 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 network or to move to an area for other reasons.

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.

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 wellbeing?
- What effect might the change of location have on the individual’s wellbeing? 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? The representative should be consulted and in certain cases there will be a duty to involve such persons in carrying out a needs assessment.

Should a cross-border placement still appear to be in the interests of the individual’s wellbeing the authority should take steps to investigate which providers in the proposed new placement area exist 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 care home placement. An example case study of a cross border placement can be found in Appendix 2.

7.22 Step two: initial liaison between “first” and “second” authority

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.
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 care provider;
- seek that authority’s views on the suitability of the residential accommodation.

The initial contact can be made by telephone, but should be confirmed in writing.

The first authority should inform the provider that the placement is proposed – in the same way as with any care home placement. The first authority should ensure that the provider is aware that this will be a cross-border placement.

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 make all those arrangements that it would normally make in organising a residential care placement in its own area.

7.23 Step three: arrangements for ongoing management of placement

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.

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. 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.

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 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).

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.

7.24 Step four: confirmation of placement

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.

The second authority should acknowledge receipt of these documents and/or information and give its agreement to the arrangements in writing.
Once the placement has been confirmed by both authorities, the placing authority should contact the Commissioning Delivery Hub (Contracts) (carehometeam@staffordshire.gov.uk) with details of the placement in order for the contracts to be sent out:

1. client name  
2. client ID  
3. care home name and full address  
4. care home email address (all contract documents are sent electronically)  
5. placement date

After the home has returned the contracts and all necessary checks have been undertaken by the Commissioning team, the placing social worker would be sent an email to inform that any Service Provision(s) relating to the placement could now be processed on Care Director.

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.

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.

7.3 Where the individual requires NHS-funded nursing care

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 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.

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 a care home.

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 will be amended to facilitate this. The first authority should inform the CCG of the arrangements being made and their formal consent sought. It is not expected that the CCG would withhold consent – any change in costs associated with the care would be likely to be negligible.

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 funded nursing care.

7.4 Where the individual’s care needs change during the placement

In the event that an individual’s care and support needs change during the course of the placement, these should be picked up in the course of a review and the care and support
plan amended as needed. The first authority retains responsibility for review and amendment of the individual’s care and support plan.

7.5 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.

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 Schedule 1 to the Act (general non-transfer of responsibility in the case of placements). Details can be found within the regulations and schedule for the Act.

7.6 Provider failure

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 care and support 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 cooperation between the first and second authority throughout will be important. 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.

8. Consultation, Approval and Ratification

This policy is a summary of Statutory Guidance and regulation only.

9. Dissemination and Implementation

This policy will be published internally electronically, via the intranet and policy databases and communicated to external stakeholders.

9.2 Implementation

The policy identifies the date of implementation and training and awareness will be provided to ensure a successful implementation.
10. Monitoring Compliance

Compliance in relation to this policy will be monitored through staff supervisory processes to ensure front line staff are familiar with the policy and content.

11. References and Supporting Documents

11.1 References

- Care Act Regulations and Statutory Guidance 2014
- Mental Capacity Act 2005

11.2 Supporting Documents

Statutory Guidance and Regulations should be consulted as required.

12. Policy Review

This policy will be reviewed two years following ratification or sooner if the necessity arises.
Appendices

Appendix 1

Scenario: persons of no settled residence

David is 20 years old and has a physical disability together with mild learning disabilities. Until four months ago, he lived with his family in Local Authority A. However, his family relationship broke down and his parents asked him to leave their home for good. They have since changed the locks on their house.

He sought help from Local Authority A and was placed in a care home for young people with disabilities located in Local Authority A. This placement was made on a short-term basis until a more permanent solution for David could be found in a supported living type accommodation with his own tenancy. However, David chose to leave the care home after a few weeks and stayed with friends in Local Authority B for a short period. However, he has recently presented at Local Authority B seeking accommodation on the basis that he is a destitute adult who is in need of care and attention. Local Authority B provides David with care home accommodation but falls into dispute with Local Authority A over his place of ordinary residence.

Local Authority B contends that David remains ordinarily resident in Local Authority A, given his previous residence there and his recent discharge from their care. Local Authority A argues that David has acquired a new ordinary residence in Local Authority B.

As David is being provided with a type of accommodation by Local Authority B, as specified by the regulations, S39 (1)(a) applies. Therefore, he is deemed to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the care home accommodation was provided for him. The day before David presented at Local Authority B he was staying with friends in that Local Authority area. His friends made it clear that this was a short-term temporary arrangement, to prevent him becoming homeless upon leaving the care home in Local Authority A. He had not built up any community ties within the area of Local Authority B; nor had he chosen to reside in Local Authority B voluntarily and for settled purposes. Therefore, under the (Shah) test, David has not acquired an ordinary residence in Local Authority B.

However, nor does it appear that David has retained his ordinary residence in Local Authority A where he lived with his parents. He left the care home in Local Authority A intentionally and has no settled residence to which he can return. As David appears not to have been ordinarily resident in either Local Authority A or Local Authority B immediately before he presented at Local Authority B and was provided with accommodation, it is decided that he is a person of no settled residence. Section 18 of the Care Act 2014 makes clear that Local Authorities have a duty to meet the needs of someone, if they are present in its area but of no settled residence. Local Authority B is therefore the authority responsible for David’s eligible care and support needs and can therefore treat David as if he were ordinarily resident in their area and provide him with accommodation.
Appendix 2

Case Study Cross-Border Placement: Frances

Frances is a 78 year old lady with severe arthritis who lives alone in south London. Frances slips whilst walking down her stairs and breaks a wrist and leg. Frances is admitted to a local general hospital. At the hospital, Francis is visited by a Local Authority social services member, Ray who conducts a needs assessment. During the assessment, Ray asks Frances about her support network – does she have any friends and/or family nearby? Frances says her best friend passed away last year. She has one son but he lives outside Edinburgh with his young family.

When Ray re-visits Frances, he informs her that she is eligible for care and support. He also says, that whilst a number of options exist, it is Ray’s opinion, that Frances's severe arthritis now means she is unable to live independently and that a care home may be the best way forward. Frances agrees. She expresses relief that she will not have to return home alone but is anxious at moving to an unfamiliar setting.

Ray asks Frances whether she has considered moving to be nearer her son. Frances says yes, but has previously dismissed the idea because she didn’t want to get in the way. Ray asks whether a move to a care home near her son might be attractive. The Local Authority would take care of the arrangements and her son and his family could visit more easily. Frances is keen to take this further. Ray asks Frances’s permission to contact her son. Frances agrees.

Ray contacts Frances’s son, Ian. Ian says he wishes he could visit Frances more often but with two young children and a busy job it is hard to do so. Ian phones every few days and says he knows Frances has been feeling down since her friend passed away. Ian’s house is too small to accommodate Frances and is empty all day so no-one would be available to support Frances. Ray explains the possibility of a cross-border placement for Frances into a care home close to Ian. Ian says he would find this very attractive. Frances has always enjoyed her visits to Scotland before, especially seeing her grandchildren. Ian agrees to talk to Frances about the possibility.

Ray hears from Frances the next day – she and her son would like to go forward with a cross-border placement. Ray researches possible care homes close to Ian, taking Frances’s preferences into account and selects three possibilities which Frances, in conference with Ian, pick from. The preferred home is in a suburban area similar to that in which Frances currently lives and close to a church – Frances is a regular church-goer. Ray contacts the care home provider and confirms availability and fees and informs the provider that this would be a cross-border placement.