

**2010 No. 989(W.98)(C.67)**

**SOCIAL CARE, WALES**

**The Health and Social Care Act  
2008 (Commencement No 2 and  
Transitional Provisions) (Wales)  
Order 2010**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This order brings into effect section 148 of the Health and Social Care Act 2008 (“the Act”). This section makes amendments to sections 24 and 32 of the National Assistance Act 1948 (“the 1948 Act”) and section 2 of the Chronically Sick and Disabled Persons Act 1970 (“the 1970 Act”).

Under Part 3 of the 1948 Act and section 2 of the 1970 Act, a local authority is liable for the provision of services for people who are ordinarily resident in its area. Where two or more local authorities are in dispute about a person’s ordinary residence, section 32 of the 1948 Act provides that they can refer the dispute to the Secretary of State or the Welsh Ministers for determination.

In relation to the provision of residential accommodation, section 24 of the 1948 Act sets out additional provisions about ordinary residence. Subsections (6) and (7) of section 24 are replaced by new subsections (6) and (6A). The new subsections provide that a person provided with NHS accommodation is deemed to retain his or her ordinary residence in the area in which the person was residing before the NHS accommodation was provided, regardless of whether this placement is in hospital or another sort of placement. Article 3(1) makes transitional provision to clarify that the amendment will not affect those who are already in non-hospital NHS placements immediately before the provision comes into force but will take effect for patients in hospitals vested in Local Health Boards at that time.

Section 148 (2) of the Act amends section 32 of the 1948 Act to clarify how disputes, including those

which involve an authority in England and an authority in Wales, will be resolved. The amendment places a duty on the Secretary of State and the Welsh Ministers to make and publish arrangements in this regard.

Section 148(3) of the Act amends section 2 of the 1970 Act to make disputes between local authorities about ordinary residence subject to determination through the procedure under section 32 of the 1948 Act.

The transitional provision in article 3(2) provides that this amendment will not operate in relation to any case which is already the subject of court proceedings on the day the amendment comes into force.

#### **Note as to earlier commencement orders**

The following provisions of the Act have been brought into force in relation to Wales by commencement orders made by the Welsh Ministers before the date of this order.

<i>Provision</i>	<i>Date</i>	<i>of</i>	<i>S.I. number</i>
		<i>commencement</i>	
s.147	6 April 2009		2009/631 (W.57)
s.166 (so far as it relates to Part 5 of Schedule 15)	6 April 2009		2009/631 (W.57)
Schedule 13	6 April 2009		2009/631 (W.57)
Part 5 of Schedule 15	6 April 2009		2009/631 (W.57)

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Order 2010**

*Made* 24 March 2010

*Laid before the National Assembly for Wales*

26 March 2010

*Coming into force* 19 April 2010

The Welsh Ministers, in exercise of the powers conferred by sections 161(3) and (4), 167(2) and section 170(3) of the Health and Social Care Act 2008(1), and after consultation with the Secretary of State in accordance with section 172(4) of that Act, make the following order:

**Citation, interpretation and application**

**1.**—(1) The title of this Order is the Health and Social Care Act 2008 (Commencement No 2 and Transitional Provisions) (Wales) Order 2010.

(2) In this Order—

“1948 Act” (“*Deddf 1948*”) means the National Assistance Act 1948 (2);

“1970 Act” (“*Deddf 1970*”) means the Chronically Sick and Disabled Persons Act 1970 (3);

“2008 Act” (“*Deddf 2008*”) means the Health and Social Care Act 2008;

“appointed day” (“*diwrnod penodedig*”) has the meaning given in article 2;

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(1) 2008 c.14  
(2) 1948 c.29  
(3) 1970 c.44

“NHS accommodation” (“*llety’r GIG*”) has the meaning given by section 24(6A) of the 1948 Act (1)

“non-hospital NHS accommodation” (“*llety’r GIG nad yw’n ysbyty*”) means NHS accommodation which is not at a hospital vested in either —

(a) the Secretary of State,

(b) a National Health Service Trust established under the National Health Service Act 2006(2), the National Health Service (Wales) Act 2006(3), or the National Health Service (Scotland) Act 1978(4),

(c) a Local Health Board established under the National Health Service (Wales) Act 2006; or,

(d) a Primary Care Trust or an NHS foundation trust established under the National Health Service Act 2006.

(3) This Order applies in relation to Wales.

### **Appointed day**

2. 19 April 2010 is the appointed day for the coming into force of section 148 of the 2008 Act.

### **Transitional provision**

3. The amendments made to section 24 of the 1948 Act (authority liable for provision of accommodation) by section 148(1) do not have effect in relation to a person for whom non-hospital NHS accommodation is being provided immediately before the appointed day so long as that episode of accommodation continues.

4. The amendments made to section 2 of the 1970 Act by section 148(3) of the 2008 Act do not have effect in relation to a question arising under section 2 of the 1970 Act as to a person’s ordinary residence in a case where, on the appointed day, the question is the subject of court proceedings.

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(1) Section 24(6A) is inserted by section 148(1) of the 2008 Act. “NHS accommodation” is defined as “(a) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or (b) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board, other than accommodation so provided jointly with a local authority”.

(2) 2006 c.41

(3) 2006 c.42

(4) 1978 c. 29

*Gwenda Thomas*

Deputy Minister for Social Services under authority of  
the Minister for Health and Social Services, one of the  
Welsh Ministers

24 March 2010