

EAST AYRSHIRE COUNCIL

SOCIAL WORK COMMITTEE: 3 NOVEMBER 2005

ORDINARY RESIDENCE CONSULTATION ON PROPOSED AMENDMENT TO THE SOCIAL WORK SCOTLAND ACT 1968 FUNCTIONS OF LOCAL AUTHORITIES IN RESPECT OF PLACED PERSONS

Report by the Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to:

- (i) advise Social Work Committee of implications of “Ordinary Residence” for East Ayrshire
- (ii) seek Social Work Committee endorsement to an East Ayrshire response to a Scottish Executive Consultation on Ordinary residence. The full consultation document is available at the members information point.

2. BACKGROUND

2.1 The majority of people requiring social work services have supports provided or arranged by the local authority within which they live.

2.2 A significant minority of people however, for various reasons move to another local authority area to receive services. In these circumstances clarity is required about which Council is responsible for providing and financing these services

2.3 In 1996 guidance was issued to local authorities in Scotland to advise them how to identify the “ordinary residence” of people needing social work services under the Social Work (Scotland) Act 1968 Act, to determine which authority is responsible. (Ordinary Residence Guidance Circular SWSG 1/96)

2.4 Since 1996 there has been significant legislative change including introduction of Free Personal and Nursing Care and Supporting People. There has also been a significant change in patterns of care with a shift in the balance from institutional care to more people being supported at home often with complex packages of support.

3. CURRENT SITUATION

3.1 In recent years there have increasingly been disputes between Councils on interpretation of the Guidance in individual cases which have required resolution to be determined by Scottish Ministers.

- 3.2 It is the view of the Scottish Executive that although there is established policy and guidance, legislation on Ordinary Residence is unclear and does not provide for circumstances when people are placed in settings other than care homes.
- 3.3 In East Ayrshire we have been involved on rare occasion in disputes with other local authorities on occasion in relation to Ordinary Residence. This has on the whole been around:
- the “involvement” of a local authority before a person moved to a care home setting.
 - the mental capacity of a person to agree to move from one local authority area to another.
- 3.4 The most significant issue of Ordinary Residence for East Ayrshire at this time is what services are The “Responsible Authority” liable.

Within East Ayrshire we have a nationally utilised resource in Daldorch School. The school is at an advanced stage in developing “throughcare” services that will see young people moving on from the school to live in accommodation within the grounds.

It has already been established that young people in this circumstance will be able to claim housing benefit through East Ayrshire Council. The consequence of East Ayrshire being deemed the responsible authority for community care services would have a severe resource impact.

4. CONSULTATION

- 4.1 The Scottish Executive have provided 2 options in terms of the “Responsible Authority” and are seeking views on:
- (i) Which Option is fairer and more practical?
 - (ii) What type of specified, supported accommodation placement in another local authority area should the “Responsible Authority” remain liable for?
- 4.2 Responsible Authority – Option 1 (Preferred by Scottish Executive)

The responsible authority will be the local authority that initially assesses a person living in its area as needing community care services in a care home or specified supported accommodation and arranges that care, even when the accommodation arranged is in another local authority’s area.

Under option 1 exceptions would be

- (i) Where the person **chooses to move** without the involvement of the first local authority.
- (ii) Where a person in receipt of care at home in the area of the first local authority **chooses to move** to live in a house in the area of another local authority.

4.3 Responsible Authority – Option 2

The responsible authority would be the local authority that initially assesses a person in its area as needing community care services and arranges and funds that care package, irrespective of the setting, even when the setting is in another local authority's area.

5. IMPLICATIONS FOR EAST AYRSHIRE AND PROPOSED RESPONSE

5.1 Whilst recognising that Care at Home support packages are more complex and resource intensive than in 1996 we do not believe it would be administratively practical or efficient for a local authority to retain responsibility for care services of people who simply move house outwith their area. Any such retained responsibility would be inconsistent with other local authority services. Our experience to date is that such moves of home are overall cost neutral to East Ayrshire with some people moving into the area and some moving away. We therefore agree that Option 1 is the most practical.

5.2 We believe however that if Option 1 is adopted then it essential that issues around capacity to make “a choice to move” and the term “involvement” will require clear definition for consistent application of the new legislation.

5.3 The issue of what services the “Responsible Authority” are liable for requires clear definition.

We believe this should essentially cover all services where an outcome of the move is to receive care linked to accommodation. This would include:

- Care homes
- Supported Accommodation
- Throughcare arrangements

It is essential that as an outcome of this consultation, such arrangements are clearly the responsibility of the authority that originally placed the young person in the school.

5.4 The proposed East Ayrshire response to the consultation is attached as appendix 1.

6. FINANCIAL IMPLICATIONS

6.1 Nil at this time.

7. LEGAL/PERSONNEL IMPLICATIONS

7.1 This consultation proposes changes to the Social Work (Scotland) Act 1968.

7.2 There are no personnel implications at this time.

8. COMMUNITY PLANNING IMPLICATIONS

- 8.1 The Social Work (Scotland) Act 1968 supports the Improving Health, Improving Opportunities and Eliminating Poverty themes of the Community Plan.

9. RECOMMENDATIONS

- 9.1 It is recommended that committee:
- (i) agree the consultation response at Appendix 1
 - (ii) otherwise note the content of this report

John Mulgrew
Executive Director of Educational & Social Services
10th October 2005
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LIST OF BACKGROUND PAPERS

1. SWSG 1/96 Current Ordinary Residence Guidance Circular
2. Scottish Executive Letter from Peter Stapleton - 2 September 2005 – Ordinary Residence Consultation on Proposed Amendment to the Social Work Scotland Act 1968 – Functions of Local Authorities in Respect of Placed Persons.

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