

2002 No. 136

HEALTH AND PERSONAL SOCIAL SERVICES

**The Personal Social Services (Preserved Rights) Regulations
(Northern Ireland) 2002**

Made 29th March 2002

Coming into operation 8th April 2002

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred by sections 1(5), (6), (7) and 6(3) of the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002(a), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations, which may be cited as the Personal Social Services (Preserved Rights) Regulations (Northern Ireland) 2002, shall come into operation on 8th April 2002.

(2) In these Regulations, unless otherwise stated, references to sections are to sections of the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002.

Persons with preserved rights where Department's responsibilities do not apply

2.—(1) For the purposes of section 1(6), no part of sections 1(3) to (5) (transfer to Department of responsibilities as to accommodation) applies to a person specified for the purposes of this regulation in paragraph (2).

(2) A person specified for the purposes of this regulation is a person who in respect of the day immediately before the appointed day is not entitled to income support under section 123(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), or is so entitled but does not have a preserved right for the purposes of regulation 19 of the Income Support (General) Regulations (Northern Ireland) 1987(c).

Recovery of amounts in respect of payments by the Department

3.—(1) This regulation applies where the Department has made a payment in respect of a person pursuant to section 1(4) (liability of the Department to make payments under arrangements existing at the appointed day where personal social services in respect of his accommodation are not provided from that day in accordance with the section 1(3)).

(2) For the purposes of section 1(5), the amount which is recoverable from the person is the amount which would be recoverable under Article 36 of the Health and Personal Social Services (Northern Ireland) Order 1972(d) and regulations made under that article(e), if the accommodation were provided by the Department under Article 15 and 36 of the 1972 Order, and if the standard rate fixed for the accommodation referred to in Article 36 of that Order, and regulations made under it, were the amount of the payment made by the Department pursuant to section 1(4).

Ordinarily resident

4.—(1) A person is to be treated as ordinarily resident in any premises for the purposes of section 1 if he is in fact resident in such premises or if he is temporarily absent from such premises.

(a) 2002 c. 5 (N.I.)
(b) 1992 c. 7
(c) S.R. 1987 No. 459
(d) 1972/1265 (N.I. 14) — Article 36 was substituted by Article 25 of S.I. 1991/194 (N.I. 1) and amended by Article 37 and Schedule 1 to S.I. 1992/3204 (N.I. 20)
(e) See S.R. 1993 No. 127. the relevant amending instruments are S.R. 1993 No. 234, S.R. 1993 No. 438, S.R. 1994 No. 160, S.R. 1995 No. 286, S.R. 1996 No. 83, S.R. 1997, No. 147, S.R. 1998 No. 138, S.R. 2001 No. 205, and S.R. 2002 No. 113

(2) For the purposes of this regulation “temporarily absent” means absent for a period which does not exceed—

- (a) unless throughout the period of absence the person was a patient—
 - (i) 4 weeks, where he was before his absence a temporary resident in relevant premises;
 - (ii) 13 weeks, where he was before his absence a permanent resident in relevant premises;
- (b) 52 weeks, where throughout the period of absence the person was a patient.

(3) For the purposes of this regulation—

- (a) a “patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(a); and
- (b) a person is a permanent resident in relevant premises where those premises are his principal place of abode, and a temporary resident where they are not.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 29th March 2002.

(L.S.)

Leslie Frew

Senior Officer of the Department of Health, Social
Services and Public Safety

(a) S.R. 1975 No. 109; Relevant amending instruments are S.R. 1987 No. 391 and S.R. 1992 No. 453

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made under powers contained in the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (“the 2002 Act”).

Regulation 2 provides exceptions to the duties imposed by sections 1(3) to (5) of the 2002 Act on the Department of Health, Social Services and Public Safety to ensure the provision of community care services for people who were preserved rights cases before the appointed day. The exceptions are cases where a person, in respect of the day before the appointed day, is not entitled to income support, or is so entitled but not at the preserved rights rate.

Regulation 3 provides for the amount that can be recovered where, under section 1(4) of the 2002 Act, the Department is responsible for payments under arrangements which existed before the appointed day (“the existing arrangements”) and which continue until community care services are provided. The amount provided for is the same as the amount which could be recovered under section 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993, if the existing arrangements were the provision of accommodation by the Department under Articles 15 and 36 of the 1972 Order and the standard rate fixed for the accommodation were the payment made by the Department for the existing arrangements.

Regulation 4 makes provision for the circumstances in which a person is to be treated as ordinarily resident for the purposes of section 1 of the 2002 Act.

These Regulations do not impose a charge on business.

£1.75

Published by The Stationery Office Limited

Printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty’s Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly
Dd. N20497. C2. 4/02. Gp. 130. 14567.

ISBN 0 337 94242 0