
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 76

SOCIAL CARE

The Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002

Made - - - - 27th February 2002
Laid before the Scottish Parliament - - - - 4th March 2002
Coming into force - - 8th April 2002

The Scottish Ministers, in exercise of the powers conferred by section 50(7), (8) and (9) of the Health and Social Care Act 2001(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Preserved Rights (Transfer to Responsible Authorities) (Scotland) Regulations 2002 and shall come into force on 8th April 2002.

(2) In these Regulations, unless the context otherwise requires, any reference to a section is to a section of the Health and Social Care Act 2001.

(3) These Regulations extend to Scotland only.

Disapplication of duties of a responsible authority under section 50(3) to (7)

2. For the purposes of section 50(8), section 50(3) to (7) (duties of responsible authorities to persons having preserved rights) shall not apply to any person who, in respect of the day immediately before the appointed day—

- (a) is not entitled to income support under section 124(1) of the Social Security Contributions and Benefits Act 1992(2) or is so entitled but does not have a preserved right for the purposes of regulation 19 of the Income Support (General) Regulations 1987(3), or
- (b) is being provided with after-care services in accordance with section 7 of the Mental Health (Scotland) Act 1984(4).

(1) 2001 c. 15; see section 50(10) for definition of “prescribed”.

(2) 1992 c. 4.

(3) S.I.1987/1967. Regulation 19 was amended by S.I. 1988/663, 1445 and 2022, 1989/1678, 1991/1033, 1992/3147, 1993/2119, 1994/527 and 2139 and 1996/206 and 462.

(4) 1984 c. 36.

Recovery of payments by responsible authorities

3. For the purposes of section 50(7), the amount of any payment made by a responsible authority in pursuance of section 50(6) (payments where services not provided under section 50(3)) which is recoverable by it from the person, is the amount which would be recoverable under section 87(2) to (4) of the Social Work (Scotland) Act 1968⁽⁵⁾ if the accommodation was provided by the responsible authority under that Act and the rate fixed in accordance with sections 22(2) or 26(2) of the National Assistance Act 1948⁽⁶⁾ was the amount of the payment made by the authority pursuant to section 50(6).

Ordinarily resident

4.—(1) A person is to be treated as ordinarily resident in any premises for the purposes of section 50 if that person is in fact resident in such premises or is temporarily absent from such premises.

- (2) In this regulation, “temporarily absent” means absent for a period which does not exceed—
- (a) where the person is not a patient throughout the period of the absence—
 - (i) 4 weeks, where the person was, before the absence, a temporary resident in relevant premises; or
 - (ii) 13 weeks, where the person was, before the absence, a permanent resident in relevant premises; or
 - (b) where the person is a patient throughout the period of the absence, 52 weeks.
- (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 1975⁽⁷⁾; and
 - (b) a person is a permanent resident in relevant premises where those premises are that person’s principal place of abode, and a temporary resident where they are not.

St Andrew’s House,
Edinburgh
27th February 2002

HUGH HENRY
Authorised to sign by the Scottish Ministers

(5) 1968 c. 49. Section 87(3) was amended by the Social Security Act 1980 (c. 30), Schedule 4, paragraph 5(1) and the Social Security Act 1986 (c. 50), Schedule 10, paragraph 41(2)(a), (b) and (c).

(6) 1948 c. 29. Section 22(2) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 44; section 26(2) was amended by the National Health Service and Community Care Act 1990, sections 42(3) and 66 and Schedules 9, paragraphs 5 and 10.

(7) S.I. 1975/555. Relevant amending instruments are S.I. 1992/2595 and 1999/1326.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, make the following provisions:—

- (a) they provide that duties which would otherwise be incumbent on responsible authorities under section 50(3) of the Health and Social Care Act 2001 (“the 2001 Act”) to provide community care services do not apply in the case of a person who, on the day before the appointed day, is not entitled to receive income support, is so entitled but not as a person having a preserved right to a higher rate of payment, or is being provided with after-care services under section 7 of the Mental Health (Scotland) Act 1984 (regulation 2);
- (b) they prescribe the amount of any payment made by a responsible authority in pursuance of section 50(6) of the 2001 Act which that authority may recover from the person to whom it was made. The amount prescribed is the same as the amount which would be recovered if the accommodation had been provided under the Social Work (Scotland) Act 1968 (regulation 3); and
- (c) they prescribe the circumstances in which a person is to be treated as ordinarily resident in premises for the purposes of section 50 of the 2001 Act.