



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 4

#### SOCIAL CARE

##### *Preserved rights*

#### **50 Preserved rights: transfer to local authorities of responsibilities as to accommodation**

- (1) The following provisions, namely—
  - (a) section 26A of the National Assistance Act 1948 (c. 29) (which prevents local authorities in England or Wales providing residential accommodation for persons who were in such accommodation on 31st March 1993), and
  - (b) section 86A of the Social Work (Scotland) Act 1968 (c. 49) (which makes corresponding provision for Scotland),shall cease to have effect on the appointed day.
- (2) For the purposes of this section a “qualifying person” is—
  - (a) (in relation to any time before the appointed day) a person to whom section 26A(1) or section 86A(1) applies; or
  - (b) (in relation to any later time) a person to whom either of those sections applied immediately before that day.
- (3) Where a qualifying person is immediately before the appointed day ordinarily resident in relevant premises in the area of a local authority (“the responsible authority”), that authority shall secure that—
  - (a) as from that day, or
  - (b) as soon thereafter as is reasonably practicable,the person is provided with such community care services with respect to his accommodation as appear to the authority to be appropriate having regard to his needs as assessed under section 47(1)(a) of the 1990 Act (assessment of needs for

community care services in England or Wales) or section 12A(1)(a) of the 1968 Act (corresponding provision for Scotland).

- (4) Each local authority shall accordingly—
- (a) use their best endeavours to identify every person ordinarily resident in relevant premises in their area who is a qualifying person; and
  - (b) carry out such a programme of assessments under section 47(1)(a) or 12A(1)(a) in respect of persons so identified as appears to the authority to be required for the purpose of enabling them to discharge their duty under subsection (3) in relation to such persons.
- (5) Where a person—
- (a) is a qualifying person immediately before the appointed day, and
  - (b) is provided by the responsible authority with any community care services with respect to his accommodation in accordance with subsection (3),
- his existing arrangements shall, by virtue of this subsection, terminate on the date as from which he is provided with those services.
- (6) Where any such person is not provided with any such services as from the appointed day, any liability of his to make any payment under his existing arrangements in respect of any period (or part of a period) falling within the period beginning with the appointed day and ending with—
- (a) the date as from which he is provided with any such services, or
  - (b) the date on which he notifies (or is in accordance with regulations to be treated as notifying) the responsible authority that he does not wish to be provided with any such services,
- shall instead be a liability of the responsible authority.
- (7) However, the responsible authority may, in respect of any payment made by them in pursuance of subsection (6), recover from the person such amount (if any) as may be prescribed; and any such amount shall be so recoverable in accordance with section 56 of the 1948 Act as if it were an amount due to the authority under that Act.
- (8) The provisions of subsections (3) to (7) do not apply, to such extent as may be prescribed, in relation to any person falling within any prescribed description of persons.
- (9) Regulations may also—
- (a) prescribe the circumstances in which persons are to be treated as ordinarily resident in any premises for the purposes of this section;
  - (b) for the purpose of prescribing any such amount as is mentioned in subsection (7), provide for any provision made by or under section 22 or 26 of the 1948 Act to apply with or without modifications.
- (10) In this section—
- “the appointed day” means the day appointed under section 70 for the coming into force of subsection (1);
- “existing arrangements”, in relation to a person, means the arrangements for the provision of accommodation in the relevant premises mentioned in subsection (3), together with any arrangements for the provision of any services or facilities in connection with that accommodation;
- “prescribed” means prescribed by regulations;
- “relevant premises”—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in relation to England or Wales, has the same meaning as in section 26A of the 1948 Act;
- (b) in relation to Scotland, has the same meaning as in section 86A of the 1968 Act.

“the responsible authority” shall be construed in accordance with subsection (3).

## **51 Preserved rights: disclosure of information**

- (1) For the purposes of this section a “claimant” is—
  - (a) (in relation to any time before the appointed day) a person who is ordinarily resident in relevant premises and has a preserved right by virtue of which enhanced payments are being made to or in respect of him by way of income support or jobseeker’s allowance, or
  - (b) (in relation to any later time) a person who fell within paragraph (a) immediately before that day.
- (2) Any information—
  - (a) held by, or by a person providing services to, the Secretary of State about a claimant, and
  - (b) relating to income support or jobseeker’s allowance,may be supplied, for qualifying purposes, to the local authority in whose area the relevant premises referred to in subsection (1) are situated or to any person providing services to, or authorised to exercise functions of, the authority.
- (3) Where information relating to a claimant is supplied to any authority or person (“the recipient”) in accordance with subsection (2), the information may be supplied by the recipient, for qualifying purposes—
  - (a) to any local authority appearing to the recipient to be providing the claimant with community care services with respect to his accommodation; or
  - (b) to any person providing services to, or authorised to exercise functions of, any such local authority.
- (4) In subsections (2) and (3) “qualifying purposes”, in relation to information relating to a claimant, means—
  - (a) purposes connected with the performance of functions under section 50 in relation to the claimant, or
  - (b) other purposes connected with the termination of his preserved right in consequence of section 52(1), or
  - (c) (in subsection (2)) any further supply of the information under subsection (3).
- (5) Where information relating to a particular person is supplied to any authority or person in accordance with subsection (2) or (3), section 123 of the Social Security Administration Act 1992 (c. 5) (unauthorised disclosure of information relating to particular persons) shall apply in relation to the disclosure of the information by—
  - (a) the recipient of the information, or
  - (b) any officer or employee of the recipient,without lawful authority (within the meaning of that section) as it applies to any disclosure of information to which subsection (1) of that section applies.
- (6) In this section—

“the appointed day”, “ordinarily resident” and “relevant premises” have the same meaning as they have for the purposes of section 50;

“preserved right” means a preserved right within the meaning of the Income Support (General) Regulations 1987 (S.I. 1987/1967).

## **52 Preserved rights: alignment of social security benefits**

(1) The Secretary of State shall so exercise his powers under—

- (a) section 135(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) (applicable amount in relation to income-related benefits), and
- (b) section 4(5) of the Jobseekers Act 1995 (c. 18) (amount payable by way of jobseeker’s allowance),

as to secure that any special provision made in exercise of those powers as respects income support or jobseeker’s allowance payable to or in respect of persons who have preserved rights ceases to have effect on the appointed day.

(2) In this section—

“the appointed day” means the day appointed under section 70 for the coming into force of section 50(1);

“preserved rights” means preserved rights within the meaning of the Income Support (General) Regulations 1987.