

*These notes refer to the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (c.5) which received Royal Assent on 26 March 2002*

# Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002. They have been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a Section or part of a Section does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Act introduces new arrangements for funding and managing the care of people with social security 'preserved rights'. Previously, anyone who could find a place in an independent sector residential care home was able to have that place funded by social security, subject only to a means test. From April 1993, that was changed and, before anyone was admitted to a care home and paid for from public funds, assessment under an Health and Social Services Trust's care management procedures became mandatory. This was to ensure that those admitted to homes actually needed that level of care, and to help maintain people in their own home with appropriate support where that was a feasible alternative.
4. Those already in homes at the change-over retained their entitlement to centrally fixed social security rates to fund their places. These rates have become increasingly inadequate, and it is considered inequitable that these 'preserved rights' cases should be treated differently from those who entered the care system after April 1993. The 'preserved rights' entitlement did not apply to persons in statutory sector homes. Responsibility for all 'preserved rights' cases will now be transferred to HSS Trusts' normal care management arrangements.

## **CONSULTATION**

5. The proposal is in response to a recommendation by a Royal Commission on Long Term Care for the Elderly, which consulted widely. Public meetings were held in many cities, including Belfast. The recommendation was that Government should consider whether “preserved rights payments in social security should be brought within the post 1993 system of community care funding, or whether some other solution can be found to address the shortfall in funding experienced by this group.”
6. Further local consultation on the options was carried out by the DHSSPS during May and June 2000. This consultation document was sent to 74 separate organisations and individuals, including the HSS Boards and Trusts and relevant voluntary and other organisations. It covered possible changes to both the ‘preserved rights’ income support and the residential allowance.

## **OPTIONS CONSIDERED**

7. In relation to ‘preserved rights’, the options for change were: (i) a targeted increase in the ‘preserved rights’ rates; (ii) extension of powers for HSS Boards to top up the fees of ‘preserved rights’ cases; and (iii) transfer of responsibility for funding and care management of ‘preserved rights’ cases to HSS Boards. It was considered that the first and second options could simply lead to increases in home fees that would not be matched by improvements in services to residents. The third option was consistent with the approach of giving Boards lead responsibility for arranging community care; it would bring the people with ‘preserved rights’ under the care management and contract negotiation currently enjoyed by people without ‘preserved rights’; and, it might also enable some people to move into more supported accommodation if that is what they wanted to do. There was a 26% response rate, and the overall opinion was supportive of the proposed changes in the third option (this is also the option agreed in Great Britain). Doing nothing was not seen as a defensible option.

## **OVERVIEW**

8. The Act has 8 Sections and a Schedule. It repeals some parts of the Health and Personal Social Services (NI) Order 1972, the Health and Personal Social Services (NI) Order 1991, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

## **COMMENTARY ON SECTIONS**

### ***Section 1 – Preserved rights: transfer to Department of responsibilities as to accommodation***

*Section 1* transfers financial responsibility for people in residential accommodation with social security ‘preserved rights’ to the Department of Health, Social Services and Public Safety (in practice provision of services is

delegated to Health and Social Services Trusts, and in this Part reference will be made only to Trusts).

*Section 1(1)* provides that Article 36A of the Health and Personal Social Services (Northern Ireland) Order 1972 (which prevents Trusts providing residential accommodation to persons who were already in such accommodation on 31 March 1993) shall cease to have effect from the date that Trusts take over the responsibility for their funding (the ‘appointed day’). Their exclusion from 31 March 1993 was because such persons retained the right to a special higher rate of Income Support (the ‘preserved rights’ cases) to pay for their accommodation.

*Section 1(2)* defines a qualifying person as one who had ‘preserved rights’ at any time up to the day before the appointed day, i.e. the day subsection (1) takes effect and a Health and Social Services Trust takes over responsibility.

*Section 1(3)* provides that where a qualifying person is provided with personal social services with respect to his accommodation, his private arrangements with the residential home will terminate from the date he is provided with those services.

*Section 1(4)* provides that, where a Trust has not been able to assess a person’s need for services before the appointed day, it nevertheless assumes responsibility for the payment for his accommodation from the appointed day. That liability remains until the Trust makes whatever arrangements it considers necessary, or until the person notifies the Trust that he does not wish to be provided with services. *Section 1(5)* permits a Trust to recover all or part of such a payment, and the Department intends to make regulations so that the liability of persons during this period mirrors the normal means testing system currently in use for people in residential accommodation (provided for in Article 36(5) of the 1972 Health and Personal Social Services Order).

*Section 1(6)* enables regulations to be made so that the provisions of Section 2 do not apply to any person of a prescribed description.

*Section 1(7)* allows regulations to be made to define the meaning of “ordinarily resident”. It also provides for the regulations, mentioned under Section 1(5) above, to permit existing regulations made under Article 36 of the 1972 Order to apply with or without modifications. *Section 1(8)* defines what is meant by the term “existing arrangements”, used in paragraphs (3) and (4).

## ***Section 2 – Preserved rights: disclosure of information***

*Section 2* is concerned with identifying and locating people with preserved rights by using records held by the Department for Social Development (DSD). The Section allows the disclosure of relevant information held by that Department about preserved rights recipients to DHSSPS, Boards and Trusts.

*Section 2(1)* specifies the persons to whom this Section applies. *Section 2(2), (3) and (4)* specify the type of information which may be supplied, to whom it may be supplied and for what purpose it may be used or disclosed. *Section*

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2(5) imposes the restrictions, which apply to DSD in relation to unauthorised disclosure of information about particular persons, to apply also to all recipients of the information.

***Section 3 – Preserved rights: alignment of social security benefits***

*Section 3* provides for the termination of higher rates of income support and jobseeker's allowance. It requires DSD to exercise its powers under the Social Security Contributions and Benefits (NI) Act 1992, and the Jobseekers (NI) Order 1995, so that the provisions relating to higher rates of income support and jobseeker's allowance, payable to or in respect of persons with preserved rights, cease to have effect from the appointed day.

***Sections 4 – 8***

*Sections 4-8* contain provisions relating to repeals, interpretation, orders and regulations, commencement and the short title of the Act.