

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

EXPLANATORY NOTES

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).