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STATUTORY INSTRUMENTS

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**1991 No. 194**

**The Health and Personal Social  
Services(Northern Ireland) Order 1991**

Provision of accommodation

**Arrangements by Department for provision of accommodation by voluntary organisations,  
etc.**

25. For Article 36 of the principal Order there shall be substituted the following Article—

**“Provision of accommodation in premises maintained by voluntary organisations,  
etc.**

36.—(1) Subject to paragraph (2) and Article 36A, arrangements made by the Department under Article 15 may include arrangements with—

- (a) any voluntary organisation or other person, being an organisation or person who—
  - (i) manages a home for persons in need and is registered in accordance with Schedule 5 in respect of the home; or
  - (ii) manages premises which do not fall within the definition of a home for persons in need in Article 2(2) by reason only of their being managed or controlled by a public body constituted by special Act of Parliament or incorporated by Royal Charter; or
- (b) any person in respect of his private home, for the provision of accommodation in such home or premises.

(2) Arrangements under Article 15 for the provision of residential accommodation where nursing care is provided must be arrangements made with a voluntary organisation or other person, being an organisation or person managing premises—

- (a) in respect of which the organisation or other person is registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971(1); or
- (b) which do not fall within the definition of nursing home in section 10(1) of that Act by reason only of being maintained or controlled by a body of persons constituted by special Act of Parliament or incorporated by Royal Charter.

(3) Any arrangements made by virtue of this Article shall provide for the making by the Department to the other party thereto of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements; and, subject to paragraph (7), the Department shall recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this Article.

(4) Subject to the following provisions of this Article, a person for whom accommodation is provided under any such arrangements shall refund to the Department any payments made in respect of him under paragraph (3).

(5) Where a person for whom accommodation is provided, or proposed to be provided, under any such arrangements satisfies the Department that he is unable to make a refund at the full rate determined under paragraph (3), the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to make a refund.

(6) Regulations may make provision for the assessment, for the purposes of paragraph (5), of a person's ability to pay.

(7) Where accommodation in any home or premises is provided for any person under arrangements made by virtue of this Article and the Department, the person concerned and the voluntary organisation or other person managing the home or premises (in this paragraph referred to as "the provider") agree that this paragraph shall apply—

- (a) so long as the person concerned makes the payments for which he is liable under sub-paragraph (b), he shall not be liable to make any refund under paragraph (4) or (5) and the Department shall not be liable to make any payment under paragraph (3) in respect of the accommodation provided for him;
- (b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under paragraph (4) or (5)) be liable to pay by way of refund to the Department; and
- (c) the Department shall be liable to pay to the provider the difference between the sums paid by virtue of sub-paragraph (b) and the payments which, but for sub-paragraph (a), the Department would be liable to pay under paragraph (3).

(8) The Department may, on each occasion when it makes arrangements by virtue of this Article for the provision of accommodation for a person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the refunds required from him for his accommodation during a period commencing when the Department began to make the arrangements for accommodation for him and ending not more than 8 weeks after that."

### **Exclusion of powers to provide accommodation in certain cases**

**26.** After Article 36 of the principal Order there shall be inserted the following Article—

#### **"Exclusion of powers to provide accommodation under Article 15 or 36 in certain cases**

**36A.**—(1) Subject to paragraph (2), no accommodation may be provided under Article 15 or 36 for any person who immediately before the date on which Article 26 of the 1991 Order comes into operation was ordinarily resident in—

- (a) premises in respect of which any person is registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971;
- (b) premises which do not fall within the definition of a nursing home in section 10(1) of that Act by reason only of their being maintained or controlled by a body of persons constituted by special Act of Parliament or incorporated by Royal Charter;
- (c) a home for persons in need in respect of which any person is registered in accordance with Schedule 5; or

(d) premises which do not fall within the definition of a home for persons in need in Article 2(2) by reason only of their being managed or controlled by a public body constituted by special Act of Parliament or incorporated by Royal Charter.

(2) The Department may by regulations provide that, in such cases and subject to such conditions as may be prescribed, paragraph (1) shall not apply in relation to such classes of persons as may be prescribed.

(3) The Department shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of paragraph (1).

(4) This Article does not affect the validity of any contract made before the date mentioned in paragraph (1) for the provision of accommodation on or after that date or anything done in pursuance of such a contract.”.

### **Charges in respect of accommodation provided by the Department**

27. For Article 99 of the principal Order there shall be substituted the following Article—

#### **“Charges in respect of accommodation provided by Department under Article 15**

99.—(1) Where a person is provided under Article 15 with accommodation in premises provided by the Department, the Department shall recover from him the amount of the payment which he is liable to make in accordance with the following provisions of this Article.

(2) Subject to the following provisions of this Article, the payment which a person is liable to make for any such accommodation shall be in accordance with a standard rate determined by the Department for that accommodation and that standard rate shall represent the full cost to the Department of providing that accommodation.

(3) Subject to paragraph (4), where a person for whom such accommodation is provided, or proposed to be provided, satisfies the Department that he is unable to pay for the accommodation at the standard rate, the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to pay for the accommodation.

(4) The liability of any person to pay for accommodation under this Article may be reduced by reason of any work which he performs and which assists materially in the management of the premises.

(5) Regulations may make provision for the assessment, for the purposes of paragraph (3), of a person’s ability to pay.

(6) The Department may, on each occasion when it provides accommodation mentioned in paragraph (1) for any person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the payments required from him for his accommodation during a period commencing when the Department began to provide the accommodation for him and ending not more than 8 weeks after that.”.

### **Recovery of charges due to Department for accommodation**

28. In Article 101A of the principal Order (recovery of cost of accommodation where persons have disposed of assets)—

- (a) in paragraph (2) for the words from “Article 99” to the end there shall be substituted “Article 36 or 99 the ability of the person for whom accommodation is provided to pay for it or (as the case may be) to make a refund to the Department in respect of it.”;
- (b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) If the Department so directs, paragraph (1) shall not apply in such cases as may be specified in the direction.”.