
STATUTORY INSTRUMENTS

1993 No. 477

**NATIONAL ASSISTANCE
SERVICES SOCIAL WORK, SCOTLAND**

**The Residential Accommodation (Relevant Premises,
Ordinary Residence and Exemptions) Regulations 1993**

<i>Made</i>	- - - -	<i>4th March 1993</i>
<i>Laid before Parliament</i>		<i>9th March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

The Secretary of State for Health as respects England and Wales, in exercise of the powers conferred on her by section 26A(2)(d), (3) and (4) of the National Assistance Act 1948⁽¹⁾ and of all other powers enabling her in that behalf, and the Secretary of State for Scotland as respects Scotland, in exercise of the powers conferred on him by section 86A(2)(d), (3) and (4) of the Social Work (Scotland) Act 1968⁽²⁾ and of all other powers enabling him in that behalf, hereby make the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Residential Accommodation (Relevant Premises, Ordinary Residence and Exemptions) Regulations 1993 and shall come into force on 1st April 1993.

(2) In these Regulations, unless the context otherwise requires—

“the Income Support Regulations” means the Income Support (General) Regulations 1987⁽³⁾;

“the 1948 Act” means the National Assistance Act 1948;

“the 1968 Act” means the Social Work (Scotland) Act 1968;

“nursing home” has the meaning prescribed in regulation 19(3) of the Income Support Regulations (applicable amounts for persons in residential care and nursing homes);

“preserved right” means a preserved right for the purposes of regulation 19 of the Income Support Regulations⁽⁴⁾;

(1) 1948 c. 29; section 26A is inserted by section 43 of the National Health Service and Community Care Act 1990 (c. 19).

(2) 1968 c. 49; section 86A is inserted by section 57 of the National Health Service and Community Care Act 1990.

(3) S.I.1987/1967.

(4) The relevant amending instrument is S.I. 1992/3147.

“residential care home” has the meaning prescribed in regulation 19(3) of the Income Support Regulations(5);

“temporarily absent” means absent for a period which does not exceed—

- (a) unless throughout the period of absence the person was a patient—
 - (i) 4 weeks, where he was before his absence a temporary resident in relevant premises,
 - (ii) 13 weeks, where he was before his absence a permanent resident in relevant premises;
- (b) 52 weeks, where throughout the period of absence the person was a patient, and for these purposes 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(6), and “permanent resident” and “temporary resident” have the same meanings as in regulation 19 of the Income Support Regulations;

“unavailable premises” means—

- (a) in relation to any premises from which a person has been evicted, those premises;
 - (b) in relation to premises from which a person is temporarily absent and to which he will not be allowed to return, those premises;
 - (c) in relation to premises in respect of which a person has been served with a notice to quit, those premises.
- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
 - (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Relevant premises

2.—(1) In section 26A(1) of the 1948 Act (exclusion of powers to provide accommodation in certain cases), “relevant premises” shall include premises which are an establishment in which residential accommodation with both board and personal care is or is intended to be provided for fewer than four persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives.

(2) In section 86A(1) of the 1968 Act (exclusion of powers to provide accommodation in certain cases), “relevant premises” shall include premises which are an establishment provided by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988(7) which provides care equivalent to that given in residential accommodation provided under Part IV of the 1968 Act.

(3) In both section 26A(1) of the 1948 Act and section 86A(1) of the 1968 Act, “relevant premises” shall include premises run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society.

(5) As amended by regulation 9(b) of S.I. 1988/663, regulation 7 of S.I. 1988/1445, regulation 4 of S.I. 1988/2022, and regulation 2(2) of and paragraph 2 of Schedule 1 to S.I. 1992/3147.

(6) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and S.I. 1987/1683.

(7) 1988 c. 43. 2

Persons treated as ordinarily resident in relevant premises

3. A person shall be treated as ordinarily resident in relevant premises for the purposes of section 26A(1) of the 1948 Act and section 86A(1) of 1968 Act if he is in fact resident in such premises or if he is temporarily absent from such premises.

Exemption for persons for whom local authorities already accept responsibility

4. Section 26A(1) of the 1948 Act and section 86A(1) of the 1968 Act shall not apply to any person who on 31st March 1993 was ordinarily resident in accommodation which was provided in accordance with arrangements made by a local authority under—

- (a) Part III of the 1948 Act;
- (b) section 21 of, and paragraph 1 or 2 of Schedule 8 to, the National Health Service Act 1977(8)(care and aftercare);
- (c) the 1968 Act; or
- (d) section 7 of the Mental Health (Scotland) Act 1984(9)(functions of local authorities).

Exemptions for persons without preserved rights

5.—(1) Subject to paragraph (2), section 26A(1) of the 1948 Act and section 86A(1) of the 1968 Act shall not apply to any person who on 1st April 1993 does not have a preserved right by virtue of regulation 19(1ZB) or (1ZC) of the Income Support Regulations(10)(preserved rights).

(2) Subject to paragraph (3), where a person acquires a preserved right on or after 1st April 1993 by virtue of regulation 19(1ZC) of the Income Support Regulations, paragraph (1) shall cease to apply to that person from the date on which he acquires the preserved right.

(3) Section 26A(1) of the 1948 Act and section 86A(1) of the 1968 Act shall not apply to any person who ceases to have a preserved right by virtue of regulation 19(1ZF) or (1ZG) of the Income Support Regulations(11).

Exemption for persons under pensionable age with continuing preserved rights

6. Subject to the provisions of regulation 7, section 26A(1) of the 1948 Act and Section 86A(1) of the 1968 Act shall not apply to any person with a preserved right who on 31st March 1993 has not attained pensionable age.

Special provisions in respect of persons under pensionable age

7.—(1) Regulation 6 shall cease to apply to a person in circumstances where—

- (a) on or after 1st April 1993 he attains pensionable age; and
- (b) the local authority has not, before he attains pensionable age, accepted responsibility for making arrangements to provide him with accommodation.

(8) 1977 c. 49; section 21(1)(a) was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41); paragraph 1(2) and 2(5) of Schedule 8 were amended by section 30 of, and Schedule 10 to, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); paragraph 2(1) and (3) of Schedule 8 were amended by section 148 of, and Schedule 4 to, the Mental Health Act 1983 (c. 20); and paragraph 1(1) and 2(2) of Schedule 8 were amended, and paragraph 2(4A) of Schedule 8 was inserted, by section 108(4) and (7) of, and paragraph 34 of Schedule 12 and Schedule 15 to, the Children Act 1989.

(9) 1984 c. 36.

(10) Paragraphs (1ZB) and (1ZC) are inserted into regulation 19 of the Income Support Regulations by regulation 3(1)(b) of S.I. 1992/3147.

(11) Paragraphs (1ZG) and (1ZG) are inserted into the Income Support Regulations by regulation 3(1)(b) of S.I. 1992/3147.

(2) If on or after 1st April 1993 a person to whom regulation 6 applies (for the purposes of this regulation called “the resident”)–

- (a) approaches a local authority for assistance with arranging accommodation immediately after having been evicted from relevant premises;
- (b) will not be allowed to return to live in relevant premises from which he is temporarily absent; or
- (c) has been served with a notice to quit the relevant premises in which he is ordinarily resident,

for any reason other than that those premises have ceased or are about to cease to operate as a residential care home or a nursing home, no accommodation is to be provided for him in any premises which are owned or managed by any person who owned or managed the unavailable premises.

Exemption for persons over pensionable age in residential care homes

8. Subject to the provisions of regulation 9, section 26A(1) of the 1948 Act and section 86A(1) of the 1968 Act shall not apply to a person with a preserved right who–

- (a) on 31st March 1993 was ordinarily resident in a residential care home as defined in regulation 19(3) of the Income Support Regulations as then in force⁽¹²⁾; and
- (b) either–
 - (i) on 31st March 1993 has attained pensionable age, or
 - (ii) attains pensionable age on or after 1st April 1993 but to whom regulation 6 has ceased to apply by virtue of regulation 7(1).

Special provisions in respect of persons over pensionable age

9.—(1) Regulation 8 shall apply only to a person who–

- (a) on or after 1st April 1993–
 - (i) approaches a local authority for assistance with arranging accommodation immediately after having been evicted from a residential care home,
 - (ii) will not be allowed to return to live in a residential care home from which he is temporarily absent, or
 - (iii) has been served with a notice to quit the residential care home in which he is ordinarily resident; and
- (b) is assessed by a local authority as needing accommodation in premises which are not a nursing home,

but once a person has on any date satisfied sub-paragraphs (a) and (b) of this paragraph, regulation 8 shall not thereafter cease to apply to that person from that date.

(2) If on or after 1st April 1993 a person to whom regulation 8 applies (for the purposes of this paragraph called “the resident”)–

- (a) approaches a local authority for assistance with arranging accommodation immediately after having been evicted from relevant premises;
- (b) will not be allowed to return to live in relevant premises from which he is temporarily absent; or
- (c) has been served with a notice to quit the relevant premises in which he is ordinarily resident,

(12) As amended by regulation 9(b) of S.I. [1988/663](#), regulation 7 of S.I. [1988/1445](#), and regulation 4 of S.I. [1988/2022](#).

for any reason other than that those premises have ceased or are about to cease to operate as a residential care home or a nursing home, no accommodation is to be provided for him in any premises which are owned or managed by any person who owned or managed the unavailable premises.

4th March 1993

Virginia Bottomley
Secretary of State for Health

4th March 1993

Fraser of Carmyllie
Minister of State Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable local authorities to make residential accommodation arrangements for certain categories of people who are in or temporarily absent from independent sector residential care and nursing homes on 31st March 1993.

Residents in such accommodation generally have preserved rights to higher levels of income support, and these Regulations extend the definitions of relevant premises contained in section 26A(2) of the National Assistance Act 1948 and section 86A(2) of the Social Work (Scotland) Act 1968 (both of which come into force on 1st April 1993) to cover other premises in which residents may qualify for preserved rights (regulation 2). In addition, residents are to be treated as ordinarily resident in relevant premises if they are in fact resident in such premises or if they are temporarily absent from such premises (regulation 3).

The categories of people for whom local authorities will be entitled to make arrangements, subject to certain conditions, are all people for whom they have already accepted responsibility (regulation 4), people who are without preserved rights including people who lose them (regulation 5), people under pensionable age (regulations 6 and 7), and people over pensionable age who are ordinarily resident in residential care homes immediately before these regulations come into force, but who are evicted or served with a notice to quit those premises, or who are temporarily absent from a residential care home to which they will not be allowed to return (regulations 8 and 9).