

**2001 No. 3776**

**SOCIAL CARE, ENGLAND**

**The Preserved Rights (Transfer of Responsibilities to Local Authorities) Regulations 2001**

*Made - - - - - 26th November 2001*

*Laid before Parliament 27th November 2001*

*Coming into force - - 19th December 2001*

The Secretary of State for Health, in exercise of the powers conferred by sections 50(7), (8), (9) and (10) of the Health and Social Care Act 2001(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations—

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations, which may be cited as the Preserved Rights (Transfer of Responsibilities to Local Authorities) Regulations 2001, shall come into force on 19th December 2001.

(2) In these Regulations, unless otherwise stated, references to sections are to sections of the Health and Social Care Act 2001.

(3) These Regulations extend to England only(b).

**Persons with preserved rights where local authorities' responsibilities do not apply**

2.—(1) For the purposes of section 50(8), no part of sections 50(3) to (7) (local authorities' responsibilities in preserved rights cases) applies to a person specified for the purposes of this regulation in paragraph (2) below.

(2) A person specified for the purposes of this regulation is a person who in respect of the day immediately before the appointed day—

(a) is not entitled to income support under section 124(1) of the Social Security Contributions and Benefits Act 1992(c), or is so entitled but does not have a preserved right for the purposes of regulation 19 of the Income Support (General) Regulations 1987(d); or

(b) is being provided with after-care services in accordance with the requirement in section 117 of the Mental Health Act 1983 (e).

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(a) 2001 c. 15. Section 50(10) is cited because of the meaning ascribed to the word “prescribed”.

(b) Section 50 of the Health and Social Care Act 2001 extends to England and Wales, and to Scotland, *see* sections 70(5) and (6) of the 2001 Act. These regulations are made by the Secretary of State who is the relevant authority empowered to make these regulations for England, *see* section 66 of the 2001 Act.

(c) 1992 c. 4.

(d) S.I. 1987/1967. Regulation 19 is amended by S.I. 1988/663, 1445 and 2022, S.I. 1989/1678, S.I. 1991/1033, S.I. 1992/3147, S.I. 1993/2119, S.I. 1994/527 and 2139, S.I. 1996/206 and 462.

(e) 1983 c. 20.

### **Recovery of amounts in respect of payments by local authorities**

3.—(1) This regulation applies where a responsible authority has made a payment in respect of a person pursuant to section 50(6) (liability of responsible authority to make payments under arrangements existing at the appointed day where services are not provided from that day in accordance with section 50(3) to (5)).

(2) For the purposes of section 50(7), the amount which is recoverable from the person is the amount which would be recoverable under section 22 of the National Assistance Act 1948(a), and regulations made under that section(b), if the accommodation were provided by the responsible authority under Part 3 of that Act, and if the standard fixed rate for the accommodation referred to in section 22 of that Act, and regulations made under it, were the amount of the payment made by the authority pursuant to section 50(6).

### **Ordinarily resident**

4.—(1) A person is to be treated as ordinarily resident in any premises for the purposes of section 50 if he is in fact resident in such premises or if he is temporarily absent from such premises.

(2) For the purposes of this regulation “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.

(3) For the purposes of this regulation—

- (a) 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(c); and
- (b) a person is a permanent resident in relevant premises where those premises are his principal place of abode, and a temporary resident where they are not.

Signed by authority of the Secretary of State for Health

26th November 2001

*Jacqui Smith*  
Minister of State,  
Department of Health

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(a) 1948 c. 29.

(b) The regulations are the National Assistance (Assessment of Resources) Regulations 1992, S.I. 1992/2977. Relevant amending instruments are S.I. 1993/964 and 2230, S.I. 1994/825 and 2385, S.I. 1995/858 and 3054, S.I. 1996/602, S.I. 1997/485, S.I. 1998/497 and 1730, S.I. 2001/58, 1066, 1124 and 3441.

(c) S.I. 1975/555. Relevant amending instruments are S.I. 1992/2595 and 1999/1326.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under Part 4 of the Health and Social Care Act 2001 (“the 2001 Act”) and extend to England only.

Regulation 2 provides exceptions to the duties imposed by sections 50(3) to (7) of the 2001 Act on certain authorities to ensure the provision of community care services for people who were preserved rights cases before the appointed day. The exceptions are cases where a person, in respect of the day before the appointed day, is not entitled to income support, or is so entitled but not at the preserved rights rate, or is being provided with after-care services under section 117 of the Mental Health Act 1983.

Regulation 3 provides for the amount that can be recovered where, under section 50(6) of the 2001 Act, certain authorities are responsible for payments under arrangements which existed before the appointed day (“the existing arrangements”) and which continue until community care services are provided. The amount provided for is the same as the amount which could be recovered under section 22 of the National Assistance Act 1948 (“the 1948 Act”), and the National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977), if the existing arrangements were the provision of accommodation by the authority under Part 3 of the 1948 Act and the standard rate fixed for the accommodation were the payment made by the authority for the existing arrangements.

Regulation 4 makes provision for the circumstances in which a person is to be treated as ordinarily resident for the purposes of section 50 of the 2001 Act.

These Regulations do not impose a charge on business.

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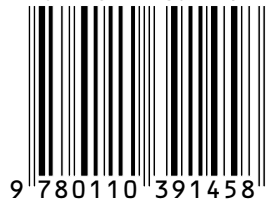
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