
EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints 3rd December 2001 as the day on which section 49 of the Health and Social Care Act 2001 (“the 2001 Act”) is to come into force and 19th December 2001 as the day on which subsections (2) to (10) of section 50 of the 2001 Act are to come into force for certain purposes in relation to Wales.

Section 49 of the 2001 Act excludes nursing care by a registered nurse from the services which can be provided by local authorities pursuant to enactments relating to the provision of community care services. Nursing care by a registered nurse is defined by section 49(2) as meaning any services provided by a registered nurse and involving the provision of care or the planning, supervision or delegation of the provision of care. The definition excludes from the definition any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse.

Article 2(1) brings section 49 into force in Wales in relation to persons who are provided with accommodation under section 21 of the National Assistance Act 1948 (“the 1948 Act”) and where particular circumstances apply. Such accommodation may, with certain exceptions, be provided to persons aged 18 or over who, by reason of their age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them. It may also be provided for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.

The particular circumstances to which article 2(1) applies are where such persons would be liable to make a payment for their accommodation and the nursing care in connection with that accommodation (under section 22 or 26 of the 1948 Act) at the standard rate or at a lower rate which is not less than the standard rate minus £100.

Article 2(2) provides that section 49 continues to apply to a person even if the person ceases to satisfy article 2(1)(b).

Article 3 brings subsections (2) to (10) of section 50 into force in Wales. Subsection (1) which is commenced by the Secretary of State with effect from 8th April 2002 has effect to cause section 26A of the National Assistance Act 1948 to cease to have effect from that date. Section 26A prevents county and county borough council in Wales (and relevant councils in England) from providing residential accommodation for persons who were in such accommodation on 31st March 1993. The corresponding provision for Scotland also ceases to have effect from 8th April 2002.

Subsection (2) of section 50 provides that a “qualifying person” for the purposes of the section is a person to whom section 26A of the 1948 Act (or the corresponding Scottish provision) applies immediately before the day on which subsection (1) comes into force (“the appointed day”). Subsection (3) requires local authorities to secure community care services to qualifying persons from the appointed day or as soon thereafter as is reasonably practicable. Subsection (4) requires local authorities to identify and assess qualifying persons in their area. Subsection (5) provides that where community care services are provided under subsection (3) a person’s private arrangements with the residential home concerned shall terminate. Subsection (6) provides for liability of the relevant local authority to make payments where an assessment has not been carried out by the appointed day. Subsection (7) permits recovery of payments made under subsection (6) as may be prescribed by regulations. Subsection (8) enables regulations to be made so that section 50 does not apply to persons of descriptions prescribed in such regulations. Subsection (9) enables regulations to be made as to the meaning of “ordinary residence” for the purposes of the section and as to the

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prescribing of amounts payable under regulations under subsection (7). Subsection (10) provides definitions for the purposes of the section.