1993 No. 163

HEALTH AND PERSONAL SOCIAL SERVICES

The Residential Accommodation (Other Premises, Persons Ordinarily Resident and Exemptions) Regulations (Northern Ireland) 1993

Made . . . . . *31st March 1993*

Coming into operation . . . *1st April 1993*

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 36A(1)(*c*), (2) and (3) of the Health and Personal Social Services (Northern Ireland) Order 1972(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Residential Accommodation (Other Premises, Persons Ordinarily Resident and Exemptions) Regulations (Northern Ireland) 1993 and shall come into operation on 1st April 1993.

(2) In these regulations—

"Board" means a Health and Social Services Board;

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**b**);

"nursing home" has the meaning prescribed in regulation 19(2) of the Income Support Regulations (persons in residential care and nursing homes);

"the Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"the 1992 Order" means the Registered Homes (Northern Ireland) Order 1992(**c**);

"preserved right" means a preserved right for the purposes of regulation 19 of the Income Support Regulations;

"relevant premises" means, except in regulation 7—

(i) the premises specified in Article 36A(1)(*a*) to (*d*) of the Order as originally enacted;

(a) S.I. 1972/1265 (N.I. 14); Article 36A was inserted by Article 26 of S.I. 1991/194 (N.I. 1) and amended by paragraph 2(6) of Schedule 1 to S.I. 1992/3204 (N.I. 20)

(b) S.R. 1987 No. 459; the relevant amending instruments are S.R. 1988 Nos. 146, 318 and 395, S.R. 1991 No. 170 and S.R. 1993 No. 149

(c) S.I. 1992/3204 (N.I. 20)

(ii) the premises specified in Article 36A(1)(*a*) and (*b*) of the Order; and

(iii) the premises prescribed in regulation 2 (other premises);

"residential care home" means—

(i) any premises in respect of which a person is registered in accordance with Schedule 5 to the Order as in operation on 31st March 1993;

(ii) any premises in respect of which a person is registered under Part II of the 1992 Order;

(iii) any premises in respect of which a person is exempt from such registration solely by virtue of their being managed or controlled by a body constituted by special Act of Parliament or incorporated by Royal Charter; or

(iv) any premises in which a person is ordinarily resident at 31st March 1993 which are managed by the Abbeyfield Society including any person affiliated to that Society but excluding any such premises managed after 31st March 1993 by that Society or any person affiliated to that Society;

"temporarily absent" means absent for a period which does not exceed—

(*a*) unless sub-paragraph (*b*) of this paragraph applies—

(i) 4 weeks, where the person was before his absence a temporary resident in relevant premises, or

(ii) 13 weeks, where the person was before his absence a permanent resident in relevant premises; or

(*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 (Northern Ireland) 1975(**a**), and "permanent resident" and "temporary resident" have the same meanings as in regulation 19 of the Income Support Regulations;

"unavailable premises" means—

(i) in relation to any premises from which a person has been evicted, those premises;

(ii) in relation to premises from which a person is temporarily absent and to which he will not be allowed to return, those premises;

(iii) in relation to premises in respect of which a person has been served with a notice to quit, those premises.

(a) S.R. 1975 No. 109; the relevant amending instruments are S.R. 1987 No. 391 and S.R. 1992 No. 453

Other Premises

2. Premises managed by the Abbeyfield Society including any person affiliated to that Society are hereby prescribed for the purposes of Article 36A(1)(*c*) of the Order (exclusion of powers to provide accommodation under Article 15 or 36 in certain cases).

Persons treated as ordinarily resident in relevant premises

3. A person shall be treated as ordinarily resident in relevant premises for the purposes of Article 36A(1) of the Order if he is in fact a resident in such premises or if he is temporarily absent from such premises.

Exemption for persons for whom Boards already accept responsibility

4. Article 36A(1) of the Order 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 Board under Article 15 or 36 of the Order.

Exemption for persons without preserved rights

5.—(1) Subject to paragraph (2), Article 36A(1) of the Order 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 (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) Article 36A(1) of the Order shall not apply to any person who ceases to have a preserved right by virtue of regulation 19(1ZE) or (1ZF) of the Income Support Regulations.

Exemption for persons under pensionable age with continuing preserved rights

6. Subject to the provisions of regulation 7, Article 36A(1) of the Order shall not apply to any person with a preserved right who on 31st March 1993 is under 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 Board has not, before he attains pensionable age, accepted responsibility for making arrangements to provide him with accommodation.

(2) If on or after 1st April 1993 a person to whom regulation 6 applies—

(*a*) approaches a Board 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.

(3) In paragraph (2), "relevant premises" has the meaning given in regulation 1(2) but does not include premises managed or provided by a body constituted by a statutory provision.

Exemption for persons over pensionable age in residential care homes

8. Subject to the provisions of regulation 9, Article 36A(1) of the Order shall not apply to a person with a preserved right who—

(*a*) on 31st March 1993 was ordinarily resident in a residental care home; 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 Board 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 Board as needing accommodation in a residential care 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—

(*a*) approaches a Board for assistance with arranging accommodation immediately after having been evicted from a residential care home;

(*b*) will not be allowed to return to live in a residential care home from which he is temporarily absent; or

(*c*) has been served with a notice to quit the residential care home 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, no accommodation is to be provided for him in a residential care home which is owned or managed by any person who owned or managed the unavailable premises.

Sealed with the Official Seal of the Department of Health and Social Services on 31st March 1993.

(L.S.) *B. McGahan*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These are the first regulations to be made under Article 36A of the Health and Personal Social Services (Northern Ireland) Order 1972 ("the 1972 Order").

Despite the prohibition contained in Article 36A(1) of the 1972 Order (which comes into operation on 1st April 1993), these regulations enable Health and Social Services Boards to make residential accommodation arrangements for certain categories of people who, at 31st March 1993, are ordinarily resident in or temporarily absent from independent sector residential accommodation, including nursing homes. Such residents generally have preserved rights to higher levels of income support.

These regulations extend the list of premises described in Article 36A(1) of the 1972 Order to include Abbeyfield Society homes (regulation 2). People who, at 31st March 1993, are ordinarily resident in these homes may also qualify for preserved rights. Regulation 3 provides that people are to be treated as ordinarily resident in the accommodation described in Article 36A(1) of the 1972 Order (as extended by regulation 2) if they are in fact resident in such premises or if they are temporarily absent from such premises.

The categories of people who, subject to certain conditions, will be exempt from the prohibition on Boards to make accommodation arrangements for them from 1st April 1993 are those for whom they have already accepted responsibility (regulation 4), people who are in accommodation described in Article 36A(1) (as extended by regulation 2) but who are without preserved rights including people who lose those rights (regulation 5), people with preserved rights who are under pensionable age (regulations 6 and 7), and those with preserved rights over pensionable age who are ordinarily resident in residential care homes immediately before these regulations come into operation, 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).