



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

2001 Rhif 3985 (Cy.326)

2001 No. 3985 (W.326)

**GOFAL CYMDEITHASOL,
CYMRU**

SOCIAL CARE, WALES

Rheoliadau Hawliau Cadw
(Trosglwyddo Cyfrifoldebau i'r
Awdurdodau Lleol) (Cymru) 2001

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

NODYN ESBONIADOL

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

(This note is not part of the Regulations)

Mae'r Rheoliadau hyn yn cael eu gwneud o dan adran 50 o Ddeddf Iechyd a Gofal Cymdeithasol 2001 ("Deddf 2001") sy'n ymwneud â dileu gwaharddiadau sy'n atal yr awdurdodau lleol rhag darparu llety ar gyfer personau a oedd mewn llety o'r fath ar 31 Mawrth 1993 ("achosion hawliau cadw"). Yng Nghymru yn unig y maent yn gymwys.

These Regulations are made under section 50 of the Health and Social Care Act 2001 ("the 2001 Act") which relates to the removal of prohibitions against local authorities providing accommodation to persons who were in such accommodation on 31st March 1993 ("preserved rights cases"). They apply to Wales only.

Mae rheoliad 2 yn darparu eithriadau rhag y dyletswyddau y mae adrannau 50(3) i (7) o Ddeddf 2001 yn eu gosod ar yr awdurdodau lleol i sicrhau bod gwasanaethau gofal cymunedol yn cael eu darparu ar gyfer pobl a oedd yn achosion hawliau cadw cyn y diwrnod a benodir i adran 50(1) ddod i rym. Mae'r eithriadau'n ymwneud â pherson nad oes ganddo hawl, mewn perthynas â'r diwrnod cyn y diwrnod penodedig, i gael cymhorthdal incwm, neu y mae ganddo hawl felly ond nid yn ôl y gyfradd hawliau cadw, neu berson sy'n cael gwasanaethau ôl-ofal o dan adran 117 o Ddeddf Iechyd Meddwl 1983.

Regulation 2 provides exceptions to the duties imposed by sections 50(3) to (7) of the 2001 Act on local authorities to ensure the provision of community care services for people who were preserved rights cases before the day appointed for the coming into force of section 50(1). The exceptions relate to a person who, 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.

Mae rheoliad 3 yn darparu ar gyfer y swm a all gael ei adennill os yw awdurdodau penodol yn gyfrifol, o dan adran 50(6) o Ddeddf 2001, am daliadau o dan drefniadau a oedd yn bodoli cyn y diwrnod penodedig ("y trefniadau a oedd yn bodoli") ac a fydd yn parhau nes y caiff gwasanaethau gofal cymunedol eu darparu. Mae'r swm y darperir ar ei gyfer yr un fath â'r swm y gellid ei adennill o dan adran 22 o Ddeddf Cymorth Gwladol 1948 a rheoliadau sy'n gysylltiedig â hi os oedd y trefniadau a oedd yn bodoli yn drefniadau ar

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 will 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 and related regulations if the

gyfer darparu llety gan yr awdurdod o dan Ran III o Ddeddf 1948 a bod y tâl yr oedd yr awdurdod yn ei roi am y trefniadau a oedd yn bodoli yr un fath â'r gyfradd safonol a bennwyd ar gyfer y llety.

Mae rheoliad 4 yn gwneud darpariaeth ar gyfer yr amgylchiadau lle mae person i gael ei drin fel un sydd fel arfer yn preswyllo at ddibenion adran 50 o Ddeddf 2001.

existing arrangements were the provision of accommodation by the authority under Part III of the 1948 Act and the standard rate fixed for the accommodation was 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.

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Wedi'u gwneud 12 Rhagfyr 2001
Yn dod i rym 19 Rhagfyr 2001

Made 12th December 2001
Coming into force 19th December 2001

Mae Cynulliad Cenedlaethol Cymru, drwy arfer y pwerau a roddir gan adrannau 50(7), (8), (9) a (10) o Ddeddf Iechyd a Gofal Cymdeithasol 2001(a), drwy hyn yn gwneud y Rheoliadau canlynol -

The National Assembly for Wales, in exercise of the powers conferred by sections 50(7), (8), (9) and (10) of the Health and Social Care Act 2001(a), hereby makes the following Regulations -

Enwi, cychwyn, dehongli a chymhwyso**Citation, commencement, interpretation and application**

1. -(1) Daw'r Rheoliadau hyn, a enwir Rheoliadau Hawliau Cadw (Trosglwyddo Cyfrifoldebau i'r Awdurdodau Lleol) (Cymru) 2001, i rym ar 19 Rhagfyr 2001.

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

(2) Yn y Rheoliadau hyn -

(2) In these Regulations -

- (a) mae "awdurdod cyfrifol" i gael ei ddehongli yn unol â "*responsible authority*" yn adran 50(3);
- (b) ystyr "y diwrnod penodedig" ("*the appointed day*") yw'r diwrnod a benodir o dan adran 70 i adran 50(1) ddod i rym;
- (c) ystyr "y Ddeddf" ("*the Act*") yw Ddeddf Iechyd a Gofal Cymdeithasol 2001 ac mae cyfeiriadau at adrannau yn gyfeiriadau at adrannau o'r Ddeddf honno; ac
- (ch) ystyr "y Rheoliadau Cymhorthdal Incwm" ("*the Income Support Regulations*") yw Rheoliadau Cymhorthdal Incwm (Cyffredinol) 1987(b).

- (a) "the Act" ("*y Ddeddf*") means the Health and Social Care Act 2001 and references to sections are to sections of that Act;
- (b) "the appointed day" ("*y diwrnod penodedig*") means the day appointed under section 70 for the coming into force of section 50(1);
- (c) "the Income Support Regulations" ("*y Rheoliadau Cymhorthdal Incwm*") means the Income Support (General) Regulations 1987(b); and
- (d) "responsible authority" ("*awdurdod cyfrifol*") is to be construed in accordance with section 50(3).

(3) Mae'r Rheoliadau hyn yn gymwys i Gymru yn unig.

(3) These Regulations apply to Wales only.

(a) 2001 p.15. Cyfeirir at adran 50(10) oherwydd yr ystyr a roddir i'r gair "prescribed".

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

(b) O.S. 1987/1967. Diwygiwyd Rheoliad 19 gan O.S. 1988/663, 1445 a 2022, O.S. 1989/1678, O.S.1991/1033, O.S. 1992/3147, O.S. 1993/2119, O.S. 1994/527 a 2139 ac O.S. 1996/206 a 462.

(b) 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 and S.I. 1996/206 and 462.

Personau â hawliau cadw lle nad yw cyfrifoldebau'r awdurdodau lleol yn gymwys

2. -(1) At ddibenion adran 50(8) nid oes yr un rhan o adrannau 50(3) i (7) (cyfrifoldebau'r awdurdodau lleol mewn achosion hawliau cadw) yn gymwys i berson a bennir at ddibenion y rheoliad hwn ym mharagraff (2) isod.

(2) Mae person a bennir at ddibenion y rheoliad hwn yn berson sydd, mewn perthynas â'r diwrnod yn union cyn y diwrnod penodedig -

- (a) heb hawl i gael cymhorthdal incwm o dan adran 124(1) o Ddeddf Cyfraniadau a Budd-daliadau Nawdd Cymdeithasol 1992(a), neu sydd â hawl felly ond sydd heb hawl gadw at ddibenion rheoliad 19 o'r Rheoliadau Cymhorthdal Incwm; neu
- (b) sy'n cael gwasanaethau ôl-ofal yn unol â'r gofyniad yn adran 117 o Ddeddf Iechyd Meddwl 1983(b).

Adennill symiau mewn perthynas â thaliadau gan awdurdodau lleol

3. -(1) Mae'r rheoliad hwn yn gymwys os oes awdurdod cyfrifol wedi gwneud taliad mewn perthynas â pherson yn unol ag adran 50(6) (rhwymedigaeth yr awdurdod cyfrifol i wneud taliadau o dan drefniadau a oedd yn bodoli ar y diwrnod penodedig os nad oes gwasanaethau'n cael eu darparu o'r diwrnod hwnnw ymlaen yn unol ag adran 50(3) i (5)).

(2) At ddibenion adran 50(7) y swm sy'n adenilladwy oddi ar y person yw'r swm a fyddai'n adenilladwy o dan adran 22 o Ddeddf Cymorth Gwladol 1948(c) a rheoliadau a wnaed o dan yr adran honno(ch) os oedd y llety'n cael ei ddarparu gan yr awdurdod cyfrifol o dan Ran III o'r Ddeddf honno, ac os oedd swm y taliad gan yr awdurdod yn unol ag adran 50(6) yr un fath â'r gyfradd safonol a bennwyd ar gyfer y llety y cyfeirir ato yn adran 22 o'r Ddeddf honno.

Fel arfer yn preswyllo

4. -(1) Mae person i'w drin fel pe bai fel arfer yn preswyllo mewn unrhyw safle at ddibenion adran 50 os yw mewn gwirionedd yn preswyllo mewn safle felly neu'n absennol dros dro o safle felly.

(2) At ddibenion y rheoliad hwn, ystyr "absennol dros dro" yw absennol am gyfnod nad yw yn fwy -

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- (a) 1992 p.4.
 - (b) 1983 p.20.
 - (c) 1948 p.29.
 - (ch) Rheoliadau Cymorth Gwladol (Asesu Adnoddau) 1992 yw'r rheoliadau hyn, sef O.S. 1992/2977 fel y'u diwygiwyd mewn perthynas â Chymru gan O.S. 1993/964 a 2230, O.S. 1994/825 a 2385, O.S. 1995/858 a 3054, O.S. 1996/602, O.S. 1997/485, O.S. 1998/497 a 1730 ac O.S. 2001/276(Cy.12) a 1409(Cy.95).

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(a), or is so entitled but does not have a preserved right for the purposes of regulation 19 of the Income Support Regulations; or
- (b) is being provided with after-care services in accordance with the requirement in section 117 of the Mental Health Act 1983(b).

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(c) and regulations made under that section(d) if the accommodation were provided by the responsible authority under Part III of that Act, and if the standard rate fixed 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 the person is in fact resident in such premises or is temporarily absent from such premises.

(2) For the purposes of this regulation "temporarily absent" means absent for a period which does not exceed -

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- (a) 1992 c.4.
 - (b) 1983 c.20.
 - (c) 1948 c.29.
 - (d) The regulations are the National Assistance (Assessment of Resources) Regulations 1992, S.I. 1992/2977 as amended in relation to Wales by 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 and S.I. 2001/276(W.12) and 1409(W.95).

- (a) oni bai fod y person yn glaf drwy gydol y cyfnod absenoldeb -
 - (i) na 4 wythnos, os oedd y person cyn y cyfnod absenoldeb yn preswyllo dros dro mewn safle perthnasol;
 - (ii) na 13 wythnos, os oedd y person cyn y cyfnod absenoldeb yn preswyllo yn barhaol mewn safle perthnasol;
- (b) na 52 wythnos, os oedd y person yn glaf drwy gydol y cyfnod absenoldeb.

(2) At ddibenion y rheoliad hwn -

- (a) ystyr "claf" yw person (heblaw carcharor) y bernir ei fod yn cael triniaeth ddi-dâl fel claf mewnol o fewn ystyr Rheoliadau Nawdd Cymdeithasol (Cleifion Mewnol Ysbytai) 1975(a); a
- (b) mae person yn preswyllo'n barhaol mewn safle perthnasol os dyna brif breswylfan y person, ac mae'n preswyllo dros dro os nad dyna brif breswylfan y person.

- (a) unless throughout the period of absence the person was a patient -
 - (i) 4 weeks, where the person was before the period of absence a temporary resident in relevant premises;
 - (ii) 13 weeks, where the person was before the period of 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(a); and
- (b) a person is a permanent resident in relevant premises where those premises are the person's principal place of abode, and a temporary resident where such premises are not the person's principal place of abode.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(b)

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(b)

12 Rhagfyr 2001

12th December 2001

D. Elis-Thomas

Llywydd y Cynulliad Cenedlaethol

The Presiding Officer of the National Assembly

(a) O.S. 1975/555. Yr offerynnau diwygio perthnasol yw O.S. 1992/2595 a 1999/1326.
 (b) 1998 p.38.

(a) S.I. 1975/555. Relevant amending instruments are S.I. 1992/2595 and 1999/1326.
 (b) 1998. c.38.

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