
STATUTORY INSTRUMENTS

1972 No. 1265 (N.I. 14)

**Health and Personal Social Services
(Northern Ireland) Order 1972**

- - - - - [14th August 1972]

**PART I
INTRODUCTORY**

Title and commencement

1. This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1972 ... *Commencement* ...

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Parliament of Northern Ireland.

(2) In this Order^[F1] and the 1991 Order]

^[F2]“Article 15B arrangements” means arrangements under Article 15B;]

“the Agency” has the meaning assigned to it by Article 26(1);

“child” means a person who is not over compulsory school age;

Definition rep. by 1988 NI 23

“compulsory school age” has the same meaning as in the Education and Libraries (Northern Ireland)^[F3] Order 1986];

Definition rep. by 1991 NI 1

“dental practitioner” means a person registered in the dentists' register under the Dentists Act^[F4] 1984];

“directions”, except in Articles 9 and 11 and Schedule 11, means directions in writing and—

(a) in respect of functions of the Ministry means directions given by the Ministry;

(b) in respect of functions of the Ministry of Home Affairs^{F5}, means directions given jointly by the Ministry and that Ministry;

“disability” includes mental disorder as well as physical disability;

Definition rep. by 1984 NI 8

“Education and Library Board” has the same meaning as in the Education and Libraries (Northern Ireland)^[F3] Order 1986];

“endowment”, in relation to a hospital which was immediately before 5th July 1948 a voluntary hospital or a local authority hospital, means property held immediately before 1st August 1951 or, in the case of the Mater Infirmorum Hospital, 1st January 1972, by the governing body of the hospital or by trustees solely for the purposes of that hospital or, in the case of a local authority hospital, by the local authority or other body solely for the purposes of that hospital, being property of the following descriptions—

- (a) interests in or attaching to land (other than such premises as were transferred to and vested in the Northern Ireland Hospitals Authority under section 23(1) or (5) of the Health Services Act (Northern Ireland) 1948), and in equipment, furniture or other movable property used on, or in connection with, that land;
- (b) shares, stocks, bonds, debentures and other securities and any other personal property held by way of an investment;
- (c) money, including any credit in a banking account;
- (d) rights under any bill of exchange, promissory note, bond or obligation for the payment of money;

but so that “endowment” does not include any property in respect of which trustees are required or authorised under Article 83 to make payments to a Health and Social Services board;

“equipment” includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle;

“general dental services” has the meaning assigned to it by Article 61(1);

Definition rep. by 2004 NI 2

[^{F6}“general medical services contract” has the meaning given by Article 57;]

“general ophthalmic services” has the meaning assigned to it by [^{F7} Article 62(9)];

“governing body”, in relation to any voluntary hospital, includes any body, whether corporate or unincorporate, having the control and management of the hospital or any part thereof, or otherwise carrying on the business of the hospital or any part thereof;

“government department” means a department of the Government of Northern Ireland;

“grammar school” has the same meaning as in the Education and Libraries (Northern Ireland) [^{F3} Order 1986];

“grant-aided”, in relation to a school, has the same meaning as in the Education and Libraries (Northern Ireland) [^{F3} Order 1986];

[^{F1}“Health and Social Services Board” means a body established under Article 16;

“health and social services contract” has the meaning assigned to it by Article 8(3) of the 1991 Order and “HSS contract” shall be construed accordingly;

“Health and Social Services trust” has the meaning assigned to it by Article 10(1) of the 1991 Order and “HSS trust” shall be construed accordingly;]

“health authority” means a health authority constituted under the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946 ;

“health services” means any service or services designed to secure any of the objects of Article 4(a) and includes any services which it is the duty of the Ministry to provide or secure under the Mental Health Act;

[^{F2}“health services body” has the meaning given in Article 8(2A) of the 1991 Order;]

Definition rep. by 1992 NI 20

“hospital” means any institution for the reception and treatment of persons suffering from illness, any maternity home, any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, any institution for providing dental treatment and

maintained in connection with a dental school, and clinics, dispensaries and out-patient departments maintained in connection with any such institution or home;

“illness” includes mental disorder and any injury or disability requiring medical or dental treatment or nursing;

“independent school” has the same meaning as in the Education and Libraries (Northern Ireland)^[F3] Order 1986];

“local authority” means the council of a county or county borough or a new town commission exercising the functions of the council of a county borough;

“management committees” means management committees within the meaning of the Health Services Act (Northern Ireland) 1971 and the Mental Health Act;

“managers”, where used in relation to a voluntary school, has the same meaning as in the Education and Libraries (Northern Ireland)^[F3] Order 1986];

“medical” includes surgical;

^{F8}“medical practitioner” means a registered person within the meaning of^[F9] the Medical Act 1983];

^[F10] “medicine” includes such chemical reagents as are included in a list for the time being approved by the Department for the purposes of Article 63;]

“mental disorder” has the same meaning as in the Mental Health Act;

^[F11]“Mental Health Order” means the Mental Health (Northern Ireland) Order 1986;]

“the Minister” means the Minister of Health and Social Services;

“the Ministry” means the Ministry of Health and Social Services;

“modify” means making additions, omissions, amendments, adaptations, applications, extensions, restrictions and substitutions;

“notice” means notice in writing;

“officer” includes servant;

^[F12]“operational area”, in relation to an HSS trust, shall be construed in accordance with paragraph 3A of Schedule 3 to the 1991 Order;]

^[F1]“operational date”, in relation to an HSS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 3 to the 1991 Order;]

^[F13]“ophthalmic optician” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist.]

“order” means—

(a) in respect of functions of the Ministry, an order made by the Ministry;

(b) in respect of functions of the Ministry of Home Affairs, an order made jointly by the Ministry and that Ministry;

^[F1]“the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991;]

“owner” means the person for the time being receiving the rack rent of the land in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if the land were let at a rack rent;

“parent” in relation to any child or young person includes^[F14] any person who has parental responsibility for or care] of the child or young person;

^[F14]“parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995;]

[^{F15}“Part VI services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;]

“patient” includes an expectant or nursing mother and a lying-in woman;

“person in need” means a person who—

- (a) is in need of care and attention arising out of infirmity or age; or
- (b) suffers from illness or is substantially handicapped by any deformity or disability; or

Sub-para. (c) rep. by 1988 NI 23

- (d) being a person who has asked for assistance, is, in the opinion of the Ministry, a person to whom any of the personal social services provided by it may be made available;

“personal social services” means any service or services designed to secure any of the objects of Article 4(b) [^{F14} (including services provided under the Adoption (Northern Ireland) Order 1987 or the Children (Northern Ireland) Order 1995)];

“pharmacist” has the same meaning as in the Medicines Act 1968 ;

“pharmaceutical services” has the meaning assigned to it by Article 63(1);

“prescribed” means prescribed by regulations;

[^{F6}“primary medical services” means services which are primary medical services for the purposes of Part VI (see Article 56);]

“public body” means a body established by or under any transferred provision;

“regulations” means—

- (a) in respect of functions of the Ministry, regulations made by the Ministry;
- (b) in respect of functions of the Ministry of Home Affairs, regulations made jointly by the Ministry and that Ministry;

“relative” means a spouse [^{F16} or civil partner] or a lineal ancestor or lineal descendant, or lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother;

[^{F17}“special agency” means a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;]

Definition rep. by 1991 NI 1

“statutory instrument” has the meaning assigned to it by section 1(d) of the Interpretation Act (Northern Ireland) 1954 ;

[^{F12}“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;]

[^{F2}“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954;]

“superannuation benefits” means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits;

[^{F18}“trade dispute” has the same meaning as in section 27 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;]

“transferred provision” has the meaning assigned to it by section 1(g) of the Interpretation Act (Northern Ireland) 1954;

“the Tribunal” mean the Tribunal mentioned in Schedule 11;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members thereof;

“waters forming part of a port” includes all harbours, docks, basins, wharves, bays, creeks, channels, rivers, weirs and streams which abut on or flow into those waters;

“welfare authority” means a welfare authority constituted under the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946 .

(3) For the purposes of this Order—

- (a) power to provide any thing includes power to acquire, establish, lay out, erect or construct it and to provide buildings, works, equipment, facilities, services and amenities for or in connection with it and any other thing incidental or ancillary to it and to maintain it;
- (b) power to maintain any thing includes power to operate, manage, repair, extend, alter, improve, re-erect and renew it or any such buildings, works, equipment, facility, service, amenity or other thing as aforesaid.

(4) References in this Order to the purposes of a hospital shall be construed as referring both to the general purposes of the hospital and to any specific purpose of the hospital.

Annotations:

Amendments (Textual)

- F1 1991 NI 1
- F2 1997 NI 7
- F3 1986 NI 3
- F4 [1984 c.24](#)
- F5 functions transf. by SRO (NI) 1973/504
- F6 2004 NI 2
- F7 1988 NI 24
- F8 prosp. inserted by 1997 NI 7
- F9 [1983 c.54](#)
- F10 1978 NI 26
- F11 1986 NI 4
- F12 1994 NI 2
- F13 SI 2005/848
- F14 1995 NI 2
- F15 [2001 c. 3 \(NI\)](#)
- F16 SR 2005/479
- F17 1990 NI 3
- F18 [1992 c.9](#)

Art.3 rep. by SLR 1976

PART II

MAIN FUNCTIONS OF THE MINISTRY

General duty of Ministry

4. It shall be the duty of the Ministry—

- (a) to provide or secure the provision of integrated health services in Northern Ireland designed to promote the physical and mental health of the people of Northern Ireland through the prevention, diagnosis and treatment of illness;

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- (b) ^{F19} to provide or secure the provision of personal social services in Northern Ireland designed to promote the social welfare of the people of Northern Ireland;

and the Ministry shall so discharge its duty as to secure the effective co-ordination of health and personal social services.

Annotations:

Amendments (Textual)

F19 1978 c.53

Provision of accommodation and medical services, etc.

5.—(1) The Ministry shall provide throughout Northern Ireland, to such extent as it considers necessary, accommodation and services of the following descriptions—

- (a) hospital accommodation, including accommodation within the meaning of ^{F20} Article 110 of the Mental Health Order];
- (b) premises, other than hospitals, at which facilities are available for all or any of the services provided under this Order;
- (c) medical, nursing and other services whether in such accommodation or premises, in the home of the patient or elsewhere.

(2) In addition to its functions under paragraph (1), the Ministry may provide such other accommodation and services not otherwise specifically provided for by this Order as it considers conducive to efficient and sympathetic working of any hospital or service under its control, and, in relation to any person and notwithstanding anything contained in Article 4(a), to provide or arrange for the provision of such accommodation or services, and in connection therewith, to incur such expenditure as is necessary or expedient on medical grounds.

(3) Where accommodation or premises provided under this Article afford facilities for the provision of ^{F21} primary medical services, of general] dental or ophthalmic services or of pharmaceutical services, they shall be made available for those services on such terms and conditions as the Ministry may determine.

(4) The Ministry may permit any person to whom this paragraph applies to use for the purpose of private practice, on such terms and conditions as the Ministry may determine, the facilities available at accommodation or premises provided under this Article.

(5) The persons to whom paragraph (4) applies, being persons who provide services under this Order, are as follows:—

- (a) medical practitioners;
- ^{F21}(aa) persons providing primary medical ^{F21} services under a general medical services contract or in accordance with Article 15B arrangements;]
- (b) dental practitioners;
- (c) ophthalmic opticians;
- (d) pharmacists; and
- (e) such other persons as the Ministry may determine.

Annotations:

Amendments (Textual)

F20 1986 NI 4

F21 2004 NI 2

Provision of general health services

6.—^{F22}(1) The Ministry shall secure the provision of^{F22} primary medical services, of general dental and ophthalmic services and of pharmaceutical services in accordance with Part VI.

^{F22}(2) Services provided under Article 56(2) or under a general medical services contract are to be regarded as provided by the Department in pursuance of its functions under paragraph (1).]

Annotations:

Amendments (Textual)

F22 2004 NI 2

Prevention of illness, care and after-care

7.—(1) The Ministry shall make arrangements, to such extent as it considers necessary, for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons.

(2) The Ministry may recover from persons availing themselves of any service provided by the Ministry under this Article, otherwise than in a hospital, such charges (if any) in respect of the service as the Ministry considers appropriate.

^{F23}(3) No arrangements made under paragraph (1) may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

^{F24}(3A) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (3) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in paragraph 2 of that Schedule to the Secretary of State substitute references to the Department.]

Annotations:

Amendments (Textual)

F23 1999 c.33

F24 prosp. subst. by 2002 c. 41

Care of mothers and young children

8.—(1) The Ministry shall make arrangements, to such extent as it considers necessary, for the care, including in particular the medical and dental care, of expectant and nursing mothers, and of young children.

(2) The Ministry may recover from persons availing themselves of any service provided by the Ministry under this Article, otherwise than in a hospital, such charges (if any) in respect of the service or articles provided in connection with the service as the Ministry considers appropriate.

Medical and dental inspection, etc., of school children and young persons

9.—(1) Subject to paragraph (4), the Ministry shall provide for the medical inspection, at appropriate intervals, and for the medical supervision of persons—

- (a) in full-time attendance at any grant-aided school or for whom special arrangements have been made^{F25} under^{F26} Article 86 of the Education (Northern Ireland) Order 1998] or Article 10(1)(b) of the Education (Northern Ireland) Order 1996];

Sub-para. (b) rep. by 1987 NI 2

[^{F27}(1A) Subject to paragraph (4), the Department shall provide, to such extent as it considers necessary to meet all reasonable requirements—

- (a) for the dental inspection of such persons as are mentioned in paragraph (1);
- (b) for the dental supervision of such persons; and
- (c) for the education of such persons in dental health.]

(2) For the purpose of securing the proper medical and dental inspection of persons such as are mentioned in paragraph (1)(a) the Ministry may require the parents of any such persons to submit the persons for medical or dental inspection in accordance with arrangements made by the Ministry, and any parent who fails without reasonable excuse to comply with any such requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^{F28} £50].

(3) Subject to paragraph (4), the Ministry shall make such arrangements as are necessary for securing that there are available for persons such as are mentioned in paragraph (1) comprehensive facilities for medical and dental treatment.

(4) [^{F27}Paragraphs (1), (1A)] and (3) shall not apply in the case of persons in attendance at any voluntary grammar school the managers of which have, by means of a scheme framed by them and approved by the Ministry, made provision for the medical and dental inspection, supervision and treatment of persons in attendance at that school^{F27} and for the education of such persons in dental health].

(5) The managers of a voluntary grammar school to which paragraph (4) applies shall keep such records, and shall make such returns, as the Ministry may prescribe or direct.

(6) In any case where the managers of a voluntary grammar school^{F27} make, by means of a scheme approved by the Department, such provision as is mentioned in paragraph (4), then, in respect of each person for whom any service is provided under such provision,] the Ministry shall pay to the managers such sum as it may determine.

(7) The Ministry may, with the consent of the proprietor of any independent school, and on such financial and other terms (if any) as may be agreed between the Ministry and the proprietor of the school, make arrangements for the provision of medical and dental inspection, supervision and treatment of persons in attendance at the school^{F27} and for the education of such persons in dental health]; so however that any such arrangements shall be such as to secure, so far as is practicable, that the expense incurred by the Ministry in connection with the provision under the arrangements of any service shall not exceed the expense which would have been incurred by it in the provision thereof if the persons had been persons in attendance at a grant-aided school.

(8) In this Article—

“dental inspection” and “dental supervision” mean, respectively, inspection and supervision by a dental practitioner;

“dental treatment” includes prevention and treatment of dental disease by or (so far as permitted by law) under the direction of a dental practitioner and the supply of appliances on the recommendation of such practitioner, but does not, in relation to any person other than a person for whom special

arrangements have been made^[F25] as mentioned in paragraph (1)(a)], include treatment in that person's home;

“medical inspection” and “medical supervision” mean, respectively, inspection and supervision by or under the direction of a medical practitioner;

“medical treatment” includes prevention and treatment of disease by a medical practitioner, and the supply of appliances on the recommendation of such practitioner, but does not, in relation to any person other than a person for whom special arrangements have been made^[F25] as mentioned in paragraph (1)(a)], include treatment in that person's home.

Annotations:

Amendments (Textual)

- F27** 1988 NI 24
- F25** 1996 NI 1
- F26** 1998 NI 13
- F28** 1984 NI 3

Ancillary services

10.—(1) Without prejudice to the generality of Article 5 the Ministry shall make arrangements, to such extent as it considers necessary, for—

- (a) providing or securing the provision of ambulances and other means of transport for the conveyance of persons suffering from illness, expectant or nursing mothers or of other persons for whom such transport is reasonably required in order to avail themselves of any service under this Order;
- (b) providing or securing the provision of a laboratory service for the purpose of the prevention or cure or restriction of the incidence of disease, or the promotion of the health of the people;
- (c) providing or securing the provision of a service of diagnostic radiology; and
- (d) making available to medical practitioners and other persons who require them supplies of human blood for the purpose of carrying out blood transfusion or supplies of any other substances or preparations not readily obtainable.

(2) The Ministry shall determine the terms, including terms as to the payment of charges, and conditions on which the several services referred to in paragraph (1) shall be provided.

Vaccination and immunisation

11.—(1) The Ministry may make arrangements with medical practitioners for the vaccination or immunisation of persons against any disease, either by medical practitioners or by persons acting under their direction and control.

(2) In making arrangements under this Article, the Ministry shall, in so far as is reasonably practicable, give every medical practitioner providing^[F29] primary medical services] under Part VI^[F30] and every person providing, and every medical practitioner performing,^[F29] primary medical services] in accordance with Article 15B arrangements] an opportunity to provide services under this Article.

(3) The Ministry may, either directly or by entering into arrangements with such persons as it thinks fit, supply free of charge to medical practitioners providing services under this Article vaccines, sera or other substances for vaccinating or immunising persons against any disease.

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Annotations:**Amendments (Textual)**

F29 2004 NI 2

F30 1997 NI 7

Family planning

12.—(1) The Ministry shall make arrangements, to such extent as it considers necessary, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances or appliances.

(2) The Ministry may recover from persons availing themselves of any service under this Article such charges (if any) as the Ministry considers appropriate.

Educational and research facilities

13. The Ministry shall make available such facilities, in any premises provided by it under this Order, as appear to the Ministry to be reasonably required for under-graduate and post-graduate clinical teaching and research.

Health education

14. The Ministry may disseminate, by whatever means it thinks fit, information relating to the promotion and maintenance of health and the prevention of illness.

[^{F31}Arrangements for provision of health services by other bodies or persons

14A.—(1) The Department may make arrangements for the provision by any other body or person of any of the health services on such terms and conditions as may be agreed between the Department and that other body or person.

(2) The Department may assist any body or person carrying out any arrangements under paragraph (1) by—

- (a) permitting that body or person to use premises belonging to the Department;
- (b) making available vehicles, equipment, goods or materials; and
- (c) making available the services of any staff who are employed in connection with the premises or other things which the Department permits the body or person to use,

on such terms and conditions as may be agreed between the Department and that body or person.]

Annotations:**Amendments (Textual)**

F31 1992 NI 20

General social welfare

15.—^{F32}(1) In the exercise of its functions under Article 4(b) the Ministry shall make available advice, guidance and assistance, to such extent as it considers necessary, and for that purpose shall make such arrangements and provide or secure the provision of such facilities (including the

provision or arranging for the provision of residential or other accommodation, home help and laundry facilities) as it considers suitable and adequate.

[^{F33}(1A) Arrangements under paragraph (1) may include arrangements for the provision by any other body or person of any of the personal social services on such terms and conditions as may be agreed between the Department and that other body or person.

(1B) The Department may assist any body or person carrying out any arrangements under paragraph (1) by—

- (a) permitting that body or person to use premises belonging to the Department;
- (b) making available vehicles, equipment, goods or materials; and
- (c) making available the services of any staff who are employed in connection with the premises or other things which the Department permits the body or person to use,

on such terms and conditions as may be agreed between the Department and that body or person.]

(2) Assistance under paragraph (1) may be given to, or in respect of, a person in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash; so however that before giving assistance to, or in respect of, a person in cash the Ministry shall have regard to his eligibility for receiving assistance from any other statutory body, and, if he is so eligible, to the availability to him of that assistance in his time of need.

(3) Where under paragraph (1) the Ministry makes arrangements or provides or secures the provision of facilities for the engagement of persons in need (whether under a contract of service or otherwise) in suitable work, the Ministry may assist such persons in disposing of the produce of their work.

(4) the Ministry may recover in respect of any assistance, help or facilities under this Article such charges (if any) as the Ministry considers appropriate.

[^{F34}(5) In so far as it relates to the provision of accommodation, this Article is subject to Articles 36, and 99.]

[^{F35}(6) Assistance may not be provided under paragraph (1) in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 applies if his need for assistance has arisen solely—

- (a) because he is destitute, or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

^{F36}(7) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (6) as they apply for the purposes of that section, but for references to the Secretary of State in subsections (5) and (7) of that section and in paragraph 2 of that Schedule substitute references to the Department.]

Annotations:

Amendments (Textual)

- F32** 1978 NI 26; [1978 c.53](#)
- F33** 1992 NI 20
- F34** 1991 NI 1
- F35** [1999 c.33](#)
- F36** prosp. subst. by [2002 c. 41](#)

Art. 15A. rep. by 2002 c.6(NI)

..... F37F38

Annotations:

Amendments (Textual)

F37 prosp. in pt. inserted by 1997 NI 7

F38 amendments to be made to Arts. 15B and 15C by 2004 NI 2 Art. 6 (2)-(6), sch. 2 when prosp. in pt. is removed from those Arts.

[^{F39}[^{F40}**Primary medical services or personal] dental services: regulations**

15D.—(1) The Department may make regulations with respect to the provision of services in accordance with Article 15B arrangements.

(2) The regulations must—

- (a) include provision for participants other than Health and Social Services Boards to withdraw from Article 15B arrangements if they wish to do so;
- (b) impose conditions (including conditions as to qualifications and experience) to be satisfied by dental practitioners performing personal dental services, in accordance with Article 15B arrangements.

In sub-paragraph (b) “practitioner” does not include a practitioner who is undergoing training of a prescribed description.

(3) The regulations may, in particular—

- (a) provide that Article 15B arrangements may be made only in prescribed circumstances;
- (b) provide that Article 15B arrangements may be made only in prescribed areas;
- (c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with Article 15B arrangements;
- [^{F40}(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with Article 15B arrangements;]
- (d) require details of Article 15B arrangements to be published;
- (e) make provision with respect to the variation and termination of Article 15B arrangements;
sub-paras. (f) and (g) rep. by 2004 NI 2
- (h) provide for parties to Article 15B arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health services bodies for the purposes of Article 8 of the 1991 Order;
- (i) provide for directions, as to payments, made under Article 8(8) of the 1991 Order (as it has effect as a result of regulations made by virtue of sub-paragraph (h)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court;
- (j) authorise Health and Social Services Boards to make [^{F40} with respect to the provision of personal dental services] payments of financial assistance for prescribed categories of preparatory work undertaken—
 - (i) in connection with preparing proposals for Article 15B arrangements; or
 - (ii) in preparation for the provision of services under proposed Article 15B arrangements.

[^{F40}(3A) The regulations may also require payments to be made under Article 15B arrangements in accordance with directions given for the purpose by the Department.

(3B) A direction under paragraph (3A) may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(3C) The regulations may also include provision requiring a Health and Social Services Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person providing services under Article 15B arrangements who so requests.

(3D) The regulations may also include provision for the resolution of disputes as to the terms of any proposed Article 15B arrangements, and in particular may make provision—

- (a) for the referral of the terms of the proposed arrangements to the Department; and
- (b) for the Department, or a person appointed by it, to determine the terms on which the arrangements may be entered into.

(3E) The regulations shall provide for the circumstances in which a person providing primary medical services under Article 15B arrangements—

- (a) shall or may accept a person as a patient to whom such services are so provided;
- (b) may decline to accept a person as such a patient;
- (c) may terminate his responsibility for a patient.

(3F) The regulations shall make provision as to the right of patients to choose the persons from whom they are to receive services under Article 15B arrangements.]

Para. (4) rep. by 2001 c.3 (NI)

Para. (5) rep. by 2004 NI 2

(6) Regulations which impose conditions on persons performing^{F40} primary medical services] or persons performing personal dental services (whether made by virtue of paragraph (2)(b) or otherwise) may, in particular, include provision of a kind that may be made by regulations under Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1978.

Para. (7) rep. by 2004 NI 2]

Annotations:

Amendments (Textual)

F39 1997 NI 7

F40 2004 NI 2

Art. 15E rep. by 2004 NI 2

[^{F41}Right to choose dental practitioner

15F.—(1) Provision shall be made in regulations for conferring a right on any person to choose the dental practitioner from whom he is to receive primary dental services, subject to the consent of the practitioner concerned.

(2) The regulations shall, in particular, prescribe the procedure for choosing a practitioner.

(3) In this Article “primary dental services” means dental services which are—

- (a) provided, in accordance with Article 15B arrangements, as personal dental services; or
- (b) provided under Part VI as general dental services.]

Annotations:**Amendments (Textual)**

F41 1997 NI 7

PART III**HEALTH AND SOCIAL SERVICES BOARDS, ETC.****Establishment of Health and Social Services Boards**

16.—(1) The Ministry shall by order establish bodies to be called Health and Social Services Boards, for such areas as it may by order determine.

(2) An order under paragraph (1) determining the area of any Health and Social Services Board may include in the area any waters forming part of a port established for the purposes of the enactments relating to the customs of the United Kingdom and abutting on that area.

(3) The constitution of a Health and Social Services Board shall be as provided in that behalf in Part I of Schedule 1 and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to a Health and Social Services Board.

Functions of Health and Social Services Boards

17.—^{F42}(1) The Health and Social Services Boards shall—

- (a) exercise on behalf of the Ministry such functions (including functions imposed under an order of any court) with respect to the administration of such health and personal social services as the Ministry may direct;
- (b) make arrangements, on behalf of the Ministry, for the provision of services under Part VI;
Sub-para. (c) rep. by 1995 NI 2
Sub-para. (cc) rep. by 1995 NI 2
- ^{F43}(d) provide such facilities and accommodation for persons training with a view to qualification for registration as nurses and midwives as the National Board for Nursing, Midwifery and Health Visiting for Northern Ireland may require in discharging functions under section 6(1)(a) of the Nurses, Midwives and Health Visitors Act 1979 ;]

and shall do so in accordance with regulations and directions.

Para. (1A) rep. by 1994 NI 2

[^{F44}(1ZA) A Health and Social Services Board shall, in accordance with regulations and directions, perform such functions in relation to Article 15B arrangements as may be prescribed.

(1ZB) Regulations under paragraph (1ZA) may, in particular—

- (a) prescribe functions in relation to training;
- (b) provide for appeals to the Department or a prescribed body in relation to functions prescribed by the regulations.]

(2) Where a function is conferred on a Health and Social Services Board by any other transferred provision, that function shall be deemed to be a function which the Ministry has directed the Health and Social Services Board to exercise under paragraph (1).

Annotations:

Amendments (Textual)

F42 1978 NI 15; 1980 NI 5

F43 1979 c.36

F44 1997 NI 7

Schemes

18.—(1) A Health and Social Services Board shall, within such period as the Ministry may specify, submit to the Ministry a scheme for the exercise of its functions.

(2) A scheme under paragraph (1) shall be made in accordance with regulations and directions.

(3) The Ministry may, by order, approve a scheme submitted to it under paragraph (1), with or without modifications, and the Health and Social Services Board shall give effect to any scheme so approved.

(4) A Health and Social Services Board may at any time, and if directed by the Ministry shall within such period as the Ministry may specify, submit a new scheme under this Article and paragraph (3) shall apply to any such new scheme.

(5) If a Health and Social Services Board fails to submit any scheme which it is required under this Article to submit within a period specified by the Ministry, the Ministry may make a scheme which shall have effect as if it had been submitted and approved under this Article.

Joint committees

19. Where it appears to the Ministry to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health and Social Services Boards for the purpose of exercising some but not all of their functions, the Ministry may by order—

- (a) constitute such a joint committee;
- (b) provide for the exercise by that committee of such functions as may be specified in the order;
- (c) apply to that committee any provision of this Order, subject to the modifications (if any) specified in the order;
- (d) provide for the winding-up and dissolution of that committee;
- (e) make such other provision in connection with that committee as the Ministry thinks fit.

Art. 20 rep. by 1991 NI 1

University Liaison Committees

21.—(1) The Ministry may by order establish for the area of a Health and Social Services Board or for the areas of two or more Boards, a University Liaison Committee for the purpose of advising that Board or those Boards on the administration of the health services in the area or areas in relation to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards and the university or universities concerned on any matter of common interest to them.

(2) An order under paragraph (1) may—

- (a) constitute such a University Liaison Committee;
- (b) provide for the exercise by that Committee of such functions as may be specified in the order;

- (c) apply to that Committee any provision of this Order, subject to the modifications (if any) specified in the order;
- (d) provide for the winding-up and dissolution of that Committee;
- (e) make such other provision in connection with that Committee as the Ministry thinks fit.

PART IV

CENTRAL BODIES

Arts. 22, 23 rep. by 1986 NI 24

Advisory committees

Central advisory committees

24.—(1) The Minister may appoint a central advisory committee for any profession or professions engaged in the provision of services under this Order or for a particular service provided under this Order, and may, at any time after consultation with that committee, dissolve that committee.

(2) A central advisory committee shall advise^{[F45} the Department on the provision of any service with which that committee is concerned and shall undertake such investigation as the Department thinks fit.]

Para. (3) rep. by 1986 NI 24

(4) A central advisory committee shall consist of a chairman appointed by the Minister and such other members as the Minister may consider necessary, appointed after consultation with such interests as appear to the Minister to be concerned; and the Minister may at any time appoint an additional member or fill a vacancy created by the death or resignation of a member.

(5) A central advisory committee may appoint sub-committees, whether jointly with another central advisory committee or otherwise, and may appoint to such sub-committees persons who are not members of the central advisory committee or committees concerned.

(6) A central advisory committee may regulate its own quorum and procedure.

Annotations:

Amendments (Textual)

F45 1986 NI 24

Other advisory committees

25.—(1) For the purpose of obtaining advice upon any matter arising in connection with the performance of the duty of the Ministry under Article 4, other than a matter in relation to which a central advisory committee has been appointed, the Minister may appoint such other advisory committees as he considers necessary, and may, after any such committee has performed the functions for which it was appointed, or at any other time after consultation with that committee, dissolve that committee.

(2) An advisory committee shall consist of a chairman and such other members as the Minister may consider necessary for the purposes of the committee; and the Minister may at any time appoint an additional member or fill a vacancy created by the death or resignation of a member.

(3) An advisory committee may regulate its own quorum and procedure.

The Agency

Northern Ireland Central Services Agency for the Health and Social Services

26.—(1) There shall be established a body to be called the Northern Ireland Central Services Agency for the Health and Social Services (in this Order referred to as “the Agency”).

(2) The constitution of the Agency shall be as provided in that behalf in Part I of Schedule 3, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

Functions of the Agency

27.—(1) The Agency shall exercise such of the Ministry's functions under this Order as the Ministry may direct.

(2) After consultation with the Health and Social Services Boards and any other interests which appear to it to be concerned, the Ministry may, where the Ministry considers it expedient for the efficient discharge of the functions of the Boards, direct that the performance of such functions as the Ministry may determine shall be referred to the Agency and be discharged by it on behalf of any or all of the Boards.

[^{F46}(3) Paragraph (2) applies to HSS trusts as it applies to Health and Social Services Boards.]

(4) In carrying out its functions the Agency shall act in accordance with regulations and directions.

Annotations:

Amendments (Textual)

F46 1994 NI 2

Arts. 28, 29 rep. by 1991 NI 1

PART V

OTHER FUNCTIONS OF THE MINISTRY

Provision of vehicles for persons suffering from physical defect or disability

30.—(1) The Ministry may provide invalid carriages for persons appearing to it to be suffering from severe physical defect or disability, and, at the request of such a person, may provide for him a vehicle other than an invalid carriage.

(2) The Ministry may, in the case of an invalid carriage or other vehicle provided by it for, or belonging to, any such person as is mentioned in paragraph (1), on such terms and subject to such conditions as it may determine—

- (a) adapt the vehicle for the purpose of making it suitable for the circumstances of that person;
- (b) maintain and repair the vehicle;
- (c) take out insurance policies relating to the vehicle and pay the duty (if any) with which the vehicle is chargeable under [^{F47} the Vehicle Excise and Registration Act 1994];
- (d) provide a structure for the keeping of the vehicle therein and provide all material and execute all works necessary for the erection of the structure.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Health and Personal Social Services (Northern Ireland) Order 1972. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(3) The Ministry may, on such terms and subject to such conditions as it may determine, make payments by way of grant towards costs incurred by any such person as is mentioned in paragraph (1) in respect of all or any of the following matters in relation to an invalid carriage or other vehicle provided by the Ministry for, or belonging to, that person—

- (a) the taking of any such action as is referred to in paragraph (2);
- (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel;
- (c) the taking of instruction in the driving of the vehicle.

(4) In this Article, “invalid carriage” means a mechanically propelled vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability and used solely by such a person.

Annotations:

Amendments (Textual)

F47 1994 c.22

[^{F48}Accommodation and services for private patients

31.—(1) If the Department is satisfied, in the case of a hospital vested in it, that it is reasonable to do so, it may authorise accommodation and services at the hospital in question to be made available, to such extent as it may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Department may determine and may make and recover such charges as it may determine in respect of such accommodation and services and calculate them on any basis that it considers to be the appropriate commercial basis; but the Department shall do so only if and to the extent that it is satisfied that to do so—

- (a) will not to a significant extent interfere with the performance by it of any duty imposed on it by this Order to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at hospitals vested in the Department (whether as resident or non-resident patients) otherwise than under this Article.

(2) The Department may allow accommodation and services to which an authorisation under paragraph (1) relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a hospital vested in it for the treatment of private patients of that practitioner.

(3) The Department shall revoke an authorisation under this Article only if and to the extent that it is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at hospitals vested in it) to meet the reasonable demand for them in the area served by the hospital in question.]

Annotations:

Amendments (Textual)

F48 1988 NI 24

Hospital accommodation made available on part payment

33.—(1) Where there is provided in any hospital vested in the Ministry accommodation in single rooms or small wards, the Ministry may authorise any such accommodation which is not for the time being needed by any patient on medical grounds to be made available for patients^[F49] to such extent as it may determine, and may recover such charges as it may determine in respect of such accommodation and calculate them on any basis that it considers to be the appropriate commercial basis.]

Para. (2) rep. by 1988 NI 24

Annotations:

Amendments (Textual)

F49 1988 NI 24

Cleanliness of school children

34. The Ministry may, by regulations, make provision with respect to the examination and cleanliness of the persons and clothing of pupils in attendance at grant-aided schools and, in particular, where action for the examination or cleansing of a pupil cannot immediately take place, may provide for the exclusion from school of such pupil.

Art. 35 rep. by 1992 NI 20

^[F50] Provision of accommodation in premises maintained by voluntary organisations, etc.

36.—^[F51](1) Subject to paragraph (2), arrangements must not be made under Article 15 for the provision of accommodation together with nursing or personal care for persons such as are mentioned in Article 10(1) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (residential care homes) unless —

- (a) the accommodation is to be provided, under the arrangements, in a residential care home or nursing home (within the meaning of that Order); and
- (b) a person carrying on or managing the home is registered in respect of it under that Order.]

^[F51](2) The Department may by regulations make provision for or in connection with the making of arrangements under Article 15 for the provision of the accommodation in Great Britain, the Channel Islands or the Isle of Man.]

(3) Any arrangements made by virtue of this Article shall provide for the making by the Department to the other party thereto of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements; and, subject to paragraph (7), the Department shall recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this Article.

^[F52](4) Subject to the following provisions of this Article, a person for whom accommodation is provided under any such arrangements shall refund to the Department—

- (a) where the payments made in respect of him under paragraph (3) include any amount in respect of nursing care by a registered nurse, the amount of such payments less any amount paid in respect of such nursing care;
- (b) in any other case, the amount of the payments made in respect of him under paragraph (3).

(4A) In paragraph (4) "nursing care by a registered nurse" means any services provided by a nurse registered under Article 5 of the Nursing and Midwifery Order 2001 (SI 2002 / 253) and involving—

- (a) the provision of care, or
- (b) the planning, supervision or delegation of the provision of care,

other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse so registered.]

(5) Where a person for whom accommodation is provided, or proposed to be provided, under any such arrangements satisfies the Department that he is unable to make a refund at the full rate determined under^{F52} paragraph (4)(a) or (b)], the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to make a refund.

(6) Regulations may make provision for the assessment, for the purposes of paragraph (5), of a person's ability to pay.

(7) Where accommodation in any home or premises is provided for any person under arrangements made by virtue of this Article and the Department, the person concerned and the voluntary organisation or other person managing the home or premises (in this paragraph referred to as "the provider") agree that this paragraph shall apply—

- (a) so long as the person concerned makes the payments for which he is liable under sub-paragraph (b), he shall not be liable to make any refund under paragraph (4) or (5) and the Department shall not be liable to make any payment under paragraph (3) in respect of the accommodation provided for him;
- (b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under paragraph (4) or (5)) be liable to pay by way of refund to the Department; and
- (c) the Department shall be liable to pay to the provider the difference between the sums paid by virtue of sub-paragraph (b) and the payments which, but for sub-paragraph (a), the Department would be liable to pay under paragraph (3).

(8) The Department may, on each occasion when it makes arrangements by virtue of this Article for the provision of accommodation for a person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the refunds required from him for his accommodation during a period commencing when the Department began to make the arrangements for accommodation for him and ending not more than 8 weeks after that.]

Annotations:

Amendments (Textual)

F50 1991 NI 1

F51 2003 NI 9

F52 2002 c. 9 (NI)

Art. 36A rep. by 2002 c. 5 (NI)

Removal to suitable premises of persons in need of care and attention

37. The Ministry shall make arrangements in accordance with Schedule 6 for the purposes of securing the necessary care and attention for persons (other than persons in respect of whom a warrant may be issued under^{F53} Article 129 of the Mental Health Order]) who—

- (a) are suffering from grave chronic disease or, being aged, infirm or physically incapacitated, are living in insanitary conditions; and
- (b) are unable to devote to themselves, or to receive from persons with whom they reside, or from persons living nearby, proper care and attention.

Annotations:

Amendments (Textual)

F53 1986 NI 4

Protection for property of certain persons

38.—(1) Where a person—

- (a) is admitted as a patient to any hospital or is admitted to other accommodation provided under this Order; or
- (b) is removed to any other place under an order made under Schedule 6;

and it appears to the Ministry that there is danger of loss of, or damage to, any property of his by reason of his temporary or permanent inability to protect or deal with the property, and that other suitable arrangements have not been, or are not being made to prevent or mitigate the loss or damage, the Ministry shall take reasonable steps for that purpose.

(2) Paragraph (1) shall have effect in relation to persons suffering from mental disorder as if—

- (a) the reference to “hospital” included a reference to a private hospital within the meaning of the Mental Health^{F54} Order]; and
- (b) after sub-paragraph (b) there were inserted the following words—

“or

(c) is subject to guardianship under the Mental Health^{F54} Order];”.

(3) For the purpose of discharging the duty of the Ministry under paragraph (1), a person authorised in writing by the Ministry may, at all reasonable times, enter any premises which, immediately before the person mentioned in that paragraph was admitted or removed as aforesaid, were his place of residence or usual place of residence and may deal with any property of his in any way which is reasonably necessary to prevent or mitigate loss thereof or damage thereto.

(4) The Ministry may recover from a person admitted or removed as aforesaid, or from any person who, for the purposes of this Order, is liable to maintain him, any reasonable expenses incurred by it in relation to him under the foregoing provisions of this Article.

Annotations:

Amendments (Textual)

F54 1986 NI 4

Burial or cremation of the dead

39.—(1) The Ministry may cause to be buried or cremated the body of a deceased person who, immediately before his death, was being provided with accommodation under this Order by the Ministry.

(2) The Ministry may recover from the estate of such deceased person, or from any person who, for the purposes of this Order, was liable to maintain the deceased person immediately before his death, expenses incurred under paragraph (1),.

(3) Where the relatives of any deceased person are not known or are, by reason of their absence, poverty or otherwise, unable to defray all or part of the expenses of burying or cremating that person, the Ministry may defray the whole or part of such expenses.

(4) Nothing in this Article shall affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person; and a body shall not be cremated under this Article where the Ministry has reason to believe that cremation would be contrary to the wishes of the deceased.

Art. 40 rep. by 1988 NI 23

Availability or provision of services, otherwise than for purposes of the Order

41. The Ministry may allow persons to make use, on such terms and conditions as it thinks fit, of any services the provision of which is involved in the provision of^{F55} personal social] services under this Order; and it may, in the case of services the provision of which is so involved, provide them to an extent greater than that necessitated by the provision of^{F55} personal social] services under this Order if it thinks it expedient to do so in order to allow persons to make use of them.

Annotations:

Amendments (Textual)

F55 1988 NI 24

Provision of services to persons not ordinarily resident in Northern Ireland

42.—(1) The Ministry may make available any services provided under this Order to such persons or classes of persons not ordinarily resident in Northern Ireland to such an extent and subject to such conditions as may be prescribed.

(2) Where services are provided under paragraph (1) the Ministry may, subject to such exemptions as may be prescribed, determine charges for such services and recover them in accordance with paragraphs 3 and 4 of Schedule 15.

Powers of Ministry to conduct or assist research

43. The Ministry may conduct or promote, or assist (by grant or otherwise) any person in conducting, research into—

- (a) any matter relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health services as it thinks fit;
- (b) any matter relating to the personal social services.

Provisions relating to training

44.—(1) The Ministry may, either directly or by entering into arrangements with others,—

- (a) provide training for persons with a view to, or in the course of, their employment or use of their services in the health or personal social services in Northern Ireland, in a related service in Great Britain, or by a voluntary organisation approved by the Ministry;
- (b) allow training provided under this paragraph to be given to persons other than persons described in sub-paragraph (a), and may, under this paragraph, provide such training to an extent greater than that necessitated by the requirements of persons so described if it is thought expedient to do so in order to allow such other persons to receive such training;
- (c) provide material and premises necessary for, or in connection with, the provision of any training referred to in sub-paragraph (a) or (b);
- (d) provide training under this paragraph on such terms as the Ministry thinks fit.

(2) The Ministry may, subject to such conditions as it may determine,—

- (a) make grants towards any fees or expenses incurred by, or
- (b) defray or contribute towards the cost of maintenance of,

persons undergoing training for any of the purposes of this Order.

(3) The Ministry may, subject to such conditions as it may determine, pay the fees of, or make grants to, any body or persons providing training under paragraph (1).

Travelling expenses of patients, etc.

45.—(1) The Ministry may, by regulations, provide for the payment^[F56] by the Department or an HSS trust] in accordance with prescribed scales and in such circumstances as may be prescribed, of the whole or part of any travelling or other out-of-pocket expenses necessarily incurred—

- (a) by any person^[F57] of a prescribed description] for the purpose of availing himself of such services under this Order^[F56] or the 1991 Order] as may be prescribed;
- (b) by any person accompanying such person as is mentioned in paragraph (a);
- (c) by any relative^[F57] being a person of a prescribed description,] visiting a person availing himself of services under this Order.

^[F56]and such regulations may provide for the reimbursement by the Department to an HSS trust of payments made by the trust by virtue of this paragraph.]

^[F57](2) Paragraph 1B of Schedule 15 (powers to prescribe descriptions of persons) shall have effect in relation to paragraph (1) as it has effect in relation to paragraph 1(b) of that Schedule.]

Annotations:

Amendments (Textual)

F56 1991 NI 1

F57 1988 NI 2

Provision of residential accommodation for officers

46. The Ministry may provide, on such terms and conditions as may be agreed, residential accommodation for—

- (a) officers employed for the purposes of any of its functions under this Order;
- (b) officers employed by a voluntary organisation for the purposes of any services provided under this Order.

Loans to certain officers

47. The Ministry may make loans to such officers employed for the purposes of any of the health or personal social services and subject to such conditions as the Ministry, with the approval of the Ministry of Finance, may determine to facilitate such officers in the purchase of motor cars or motor cycles essential to the efficient carrying out of their official duties.

Acquisition and disposal of land

48.—(1) The Ministry may acquire by agreement or compulsorily in accordance with the following provisions of this Article any land which in its opinion is required for the purposes of

any of the health or personal social services, and any land held by it for those purposes may, if in the opinion of the Ministry it is no longer required for those purposes, be disposed of by it or be appropriated by it for other purposes of the Ministry.

[^{F58}(1A) Where the Department proposes to dispose of any land and is of the opinion that it is necessary, in order to facilitate that disposal, to acquire land adjoining that land, then, notwithstanding that the acquisition of that adjoining land is not required for the purposes of any of the health or personal social services, the Department may acquire by agreement that adjoining land.]

(2) Where the Ministry in exercise of the power conferred by paragraph (1) desires to acquire any land otherwise than by agreement, the Ministry may make an order (in this Article referred to as a “vesting order”) vesting the land in the Ministry.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications thereof specified in Schedule 7 to this Order, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order under that Act.

(4) The power to make a vesting order in respect of land—

- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily, or
- (b) which is declared by or under any transferred provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of each House of Parliament.

(5) Nothing in this Article shall authorise the Ministry to acquire, without the consent of the Ministry of Finance^{F59}, any land on or in which there is, to the knowledge of the Ministry, any historic monument or archaeological object.

(6) In paragraph (5), “historic monument” and “archaeological object” have the same meanings as in [^{F60} the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995].

Annotations:

Amendments (Textual)

- F58** 1986 NI 24
- F59** SR 1976/80
- F60** 1995 NI 9

Power to enter on lands

49.—(1) A person authorised in writing by the Ministry (in this Article and in Article 50 referred to as an “authorised person”) may, on production if required of his credentials, at any reasonable time enter any land for the purpose of survey, valuation or examination—

- (a) where the Ministry proposes to acquire the land otherwise than by agreement, or
- (b) where it appears to the Ministry that survey, valuation or examination is necessary in order to determine whether any functions of the Ministry under Article 48 should be exercised on or with respect to the land.

(2) A power of entry under paragraph (1) shall not be exercisable in relation to any land except—

- (a) with consent given by the occupier of the land; or
- (b) after at least twenty-four hours' notice of the intended entry has been served on the occupier or owner of the land.

(3) If any person, other than the owner or occupier of the land, knowingly prevents an authorised person from carrying out anything which the authorised person is duly authorised to do or obstructs the authorised person in carrying out any such thing, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^[F61] level 2 on the standard scale].

(4) If any person, being the owner or occupier of land, knowingly prevents an authorised person from duly carrying into effect any survey, valuation or examination of such land or obstructs the authorised person in doing any such survey, valuation or examination, a court of summary jurisdiction on proof thereof may order him to permit to be done on the land all things requisite for carrying into effect such survey, valuation or examination; and, if he fails to comply with the order, he shall be guilty of an offence and shall, for every day during which the failure continues, be liable on summary conviction to a fine not exceeding^[F61] level 2 on the standard scale].

(5) Where under this Article an authorised person enters any land, he shall ensure that the land is not left less secure by reason of the entry, and the Ministry shall make good or pay compensation for any damage to property caused by, or in consequence of, the authorised person exercising any right or failing to perform any duty under this Article.

(6) Any question of disputed compensation under this Article shall be referred to and determined by the Lands Tribunal.

(7) Any reference in this Article to an occupier or to an owner shall be construed as including a reference to a person appointed in writing by the occupier or owner as his representative for purposes including all or any of the purposes of this Article.

(8) Any power conferred by this Article shall be construed as including power to search and bore for the purpose of ascertaining the course of any sewers or drains or of ascertaining the nature of the subsoil therein and to take and carry away for examination specimens of the subsoil found therein.

Annotations:

Amendments (Textual)

F61 1984 NI 3

^[F62]Power of inspection

50.—(1) Any person authorised by the Department may at any reasonable time enter and inspect any premises (other than premises in respect of which any person is registered under^[F63] Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) 2003]) in which services are, or are proposed to be, provided by any person or body under arrangements made with the Department under this Order.

(2) Any person inspecting any premises under this Article may—

- (a) make such examination into the state and management of the premises and the services provided therein as he thinks fit;
- (b) inspect any records (in whatever form they are held) relating to the premises, or any person for whom services have been or are to be provided there; and
- (c) require the owner of, or any person employed in, the premises to furnish him with such information as he may request.

(3) Any person exercising the power to inspect records conferred by paragraph (2)(b)—

- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
- (b) may require—

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- (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,
- to give him such reasonable assistance as he may require.

- (4) Any person inspecting any premises under this Article—
- (a) may interview any person residing there in private—
 - (i) for the purpose of investigating any complaint as to those premises or the services provided there, or
 - (ii) if he has reason to believe that the services being provided there for that person are not satisfactory; and
 - (b) may examine any such person in private.

- (5) No person may—
- (a) exercise the power conferred by paragraph (2)(b) so as to inspect medical records; or
 - (b) exercise the power conferred by paragraph (4)(b),

unless he is a medical practitioner and, in the case of the power conferred by paragraph (2)(b), the records relate to medical treatment given at the premises in question.

(6) Any person exercising the power of entry under paragraph (1) shall, if so required, produce some duly authenticated document showing his authority to do so.

(7) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) In this Article “services” includes facilities and accommodation.]

Annotations:

Amendments (Textual)

F62 1992 NI 20

F63 2003 NI 9

Powers of Ministry where services are inadequate

51. If the Ministry is satisfied, after such investigation as it thinks fit, that any list prepared under this Order—

- (a) of medical practitioners undertaking to provide^{F64} primary medical services]; or
- (b) of dental practitioners undertaking to provide general dental services; or
- (c) of persons undertaking to provide general ophthalmic services; or
- (d) of persons undertaking to provide pharmaceutical services; or
- (e) of persons undertaking to provide any other services;

is not such as to secure the adequate provision of the services in question, or that for any other reason any considerable number of persons are not receiving satisfactory services under the arrangements in force under this Order, the Ministry may authorise a Health and Social Services Board to make such other arrangements as the Ministry may approve, or may itself make such other arrangements as appear to the Ministry to be necessary.

Annotations:

Amendments (Textual)

F64 2004 NI 2

Powers of Ministry in emergency

52.—^[F65](1) If the Ministry is of the opinion that an emergency exists and thinks it necessary to do so in order to secure the effective continuance of any service under^[F65] the health and personal social services legislation], the Ministry may direct that any functions conferred by or under^[F65] the health and personal social services legislation] on any body or person shall during the period of the emergency be performed by such other body or person as the Ministry may specify in the direction.

^[F66](2) In this Article and Article 53 “the health and personal social services legislation” means—

- (a) this Order;
- (b) the Adoption (Northern Ireland) Order 1987;
- (c) the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- (d) the 1991 Order;
- (e) the Health and Personal Social Services (Northern Ireland) Order 1994; and
- (f) the Children (Northern Ireland) Order 1995.]

^[F67](g) the Health Services (Primary Care) (Northern Ireland) Order 1997.]

Annotations:

Amendments (Textual)

F65 1991 NI 1

F66 1995 NI 2

F67 1997 NI 7

Default powers of Ministry

53.—(1) ^[F68]Where the Department is of opinion, on representations made to it or otherwise, that any Health and Social Services Board, special agency or HSS trust or the Agency has failed to discharge any functions conferred or imposed on it under the health and personal social services legislation], or has in carrying out those functions failed to comply with any regulations, schemes, proposals or directions relating thereto, the Ministry may after holding an inquiry make an order declaring it to be in default.

(2) When such an order is made the members of the body shall forthwith vacate their office and the order shall provide for the appointment, in accordance with^[F68] the appropriate provisions of the health and personal social services legislation], of new members of the body, and may contain such provisions as seem to the Ministry expedient for authorising any person to act in the place of the body in question pending the appointment of the new members.

(3) An order under this Article may contain such supplementary and incidental provisions as appear to the Ministry to be necessary or expedient.

Annotations:**Amendments (Textual)**

F68 1991 NI 1

*Art. 54 rep. by 2005 c. 12***PART VI****GENERAL HEALTH SERVICES**

Local representative committees

[^{F69}Recognition of]^{F70} Local Dental Committees, Local Optical Committees and Local Pharmaceutical Committees]*Para. (1) rep. by 2004 NI 2*

(2) A Health and Social Services Board may recognise a committee formed for its area which it is satisfied is representative of—

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
 - (i) sub-paragraph (a); or
 - (ii) sub-paragraph (b),

and the Article 15B dental practitioners for that area,

and any committee so recognised shall be called the Local Dental Committee for the area.

(3) Where a Health and Social Services Board is satisfied that a committee formed for its area is representative—

- (a) of the ophthalmic opticians providing general ophthalmic services in that area, or
- (b) of the persons providing pharmaceutical services in that area,

the Health and Social Services Board may recognise that committee; and any committee so recognised shall be called the Local Optical Committee or the Local Pharmaceutical Committee, as the case may be, for the area concerned.

(4) Any committee recognised under this Article may with the approval of the Health and Social Services Board delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(5) For the purposes of this Article and Article 55A, a person who meets the condition in paragraph (6)—

Sub-paras. (a) and (b) rep. by 2004 NI 2

- (c) is a deputy dental practitioner for the area of a Health and Social Services Board if he is a dental practitioner who assists a dental practitioner providing general dental services in that area in the provision of those services but is not himself on a list;
- (d) is an Article 15B dental practitioner for the area of a Health and Social Services Board if he is a dental practitioner who provides or performs personal dental services in accordance with arrangements made under Article 15B by the Health and Social Services Board (whether with himself or another).

(6) The condition referred to in paragraph (5) is that the person concerned has notified the Health and Social Services Board that he wishes to be represented under this Article by the appropriate committee for its area (and has not notified it that he wishes to cease to be so represented).

(7) For the purposes of paragraph (5)—

- (a) a person is to be treated as assisting a dental practitioner in the provision of services if he is employed by that practitioner for that purpose or if he acts as his deputy in providing those services; and
- (b) “list” has the same meaning as in paragraph 1(8) of Schedule 11.]

Annotations:

Amendments (Textual)

F69 2001 c. 3 (NI)

F70 2004 NI 2

Functions of^{F71} Local Dental Committees, Local Optical Committees and Local Pharmaceutical Committees]

55A.—(1) Regulations may require a Health and Social Services Board—

- (a) in the exercise of its functions under this Part to consult committees recognised by it under Article 55;
- (b) in the exercise of any of its functions which relate to arrangements under Article 15B to consult committees recognised by it under^{F71} Article 55(2)(c)],

on such occasions and to such extent as may be prescribed.

(2) The power conferred by paragraph (1) is without prejudice to any other power to require a Health and Social Services Board to consult any committee recognised under Article 55.

(3) Committees recognised under Article 55 shall exercise such other functions as may be prescribed.

(4) A committee recognised for an area under^{F71} paragraph (2)(b) or (c)] of Article 55 shall, in respect of each year, determine the amount of its administrative expenses for that year attributable—*Sub-paras. (a) and (b) rep. by 2004 NI 2*

- (c) in the case of a committee recognised under paragraph (2)(b) or (c)(ii) of that Article, to the deputy dental practitioners for the area;
- (d) in the case of a committee recognised under paragraph (2)(c) of that Article, to the Article 15B dental practitioners for the area.

(5) A Health and Social Services Board may, on the request of any committee recognised under Article 55 for its area, allot to that committee such sums for defraying the committee's administrative expenses as may be determined by the Board.

(6) Any sums so allotted shall be out of the moneys available to the Health and Social Services Board for the remuneration of persons of whom the committee so recognised is representative and who provide, general dental services, general ophthalmic services or pharmaceutical services, as the case may be, under this Part.

(7) The amount of any such sums shall be deducted from the remuneration of those persons in such manner as may be determined by the Health and Social Services Board.

(8) Where a committee has made a determination under paragraph (4), it shall apportion the amount so determined among the, deputy dental practitioners or Article 15B dental practitioners, as

the case may be, for the area and each such practitioner shall pay in accordance with the committee's directions the amount so apportioned to him.

(9) References in this Article to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in paragraph (5) to a committee's administrative expenses does not include so much of the committee's administrative expenses as are determined under paragraph (4) to be attributable to any practitioners mentioned in that paragraph.^{F72}

Annotations:

Amendments (Textual)

F71 2004 NI 2

F72 2001 c. 3 (NI)

[^{F73}Local Medical Committees

55B.—(1) A Health and Social Services Board may recognise a committee formed for its area, or for its area and that of one or more other Health and Social Services Boards, which it is satisfied is representative of—

- (a) the persons to whom paragraph (2) applies; and
- (b) the persons to whom paragraph (3) applies.

(2) This paragraph applies to—

- (a) every medical practitioner who, under a general medical services contract entered into by him, is providing primary medical services in the area for which the committee is formed; and
- (b) every medical practitioner who is providing general ophthalmic services in that area.

(3) This paragraph applies to every other medical practitioner—

- (a) who is performing primary medical services in the area for which the committee is formed;
 - (i) pursuant to Article 56(2)(a);
 - (ii) in accordance with Article 15B arrangements; or
 - (iii) under a general medical services contract; and
- (b) who has notified the Health and Social Services Board that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this Article shall be called the Local Medical Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Regulations may require a Health and Social Services Board, in the exercise of its functions relating to primary medical services, to consult any committee recognised by it under this Article on such occasions and to such extent as may be prescribed.

(7) A committee recognised under this Article shall have such other functions as may be prescribed.

(8) A committee recognised under this Article shall in respect of each year determine—

- (a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under paragraph (1)(a); and

- (b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under paragraph (1)(b).
- (9) A Health and Social Services Board may—
- (a) on the request of a committee recognised by it, allot to that committee such sums for defraying the expenses referred to in paragraph (8)(a) as it may determine; and
- (b) deduct the amount of such sums from the remuneration of persons of whom it is representative under paragraph (1)(a) under the general medical services contracts, or arrangements under Article 62, entered into by them with the Board.
- (10) A committee recognised under this Article shall apportion the amount determined by it under paragraph (8)(b) among the persons of whom it is representative under paragraph (1)(b); and each such person shall pay in accordance with the committee's directions the amount so apportioned to him.
- (11) References in this Article to the administrative expenses of a committee include the travelling and subsistence allowances payable to its members.]

Annotations:

Amendments (Textual)

F73 2004 NI 2

[^{F74}Primary medical services

- 56.**—(1) Each Health and Social Services Board shall, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services within its area, or secure their provision within its area.
- (2) A Health and Social Services Board may (in addition to any other power conferred on it)—
- (a) provide primary medical services itself (whether within or outside its area);
- (b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.
- (3) Each Health and Social Services Board shall publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.
- (4) A body on which functions are conferred under this Article shall co-operate with any other such body in the discharge of their respective functions relating to the provision of primary medical services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Part.
- (6) Regulations under this Article may in particular describe services by reference to the manner or circumstances in which they are provided.]

Annotations:

Amendments (Textual)

F74 2004 NI 2

[^{F75} General medical services contracts

Annotations:

Amendments (Textual)

F75 2004 NI 2

General medical services contracts: introductory

57.—(1) A Health and Social Services Board may enter into a contract under which primary medical services are provided in accordance with the following provisions of this Part.

(2) A contract under this Article is called in this Order a “general medical services contract”.

(3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Health and Social Services Board and the contractor or contractors in relation to—

- (a) the services to be provided under the contract,
- (b) remuneration under the contract, and
- (c) any other matters.

(4) The services to be provided under a general medical services contract may include—

- (a) services which are not primary medical services;
- (b) services to be provided outside the area of the Health and Social Services Board.

(5) In this Part, “contractor”, in relation to a general medical services contract, means any person entering into the contract with the Health and Social Services Board.

Requirement to provide certain primary medical services

57A.—(1) A general medical services contract shall require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed.

(2) Regulations under paragraph (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

Persons eligible to enter into general medical services contracts

57B.—(1) A Health and Social Services Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—

- (a) a medical practitioner;
- (b) two or more individuals practising in partnership where the conditions in paragraph (2) are satisfied; or
- (c) a company limited by shares where the conditions in paragraph (3) are satisfied.

(2) The conditions referred to in paragraph (1)(b) in relation to a partnership are that—

- (a) at least one partner is a medical practitioner; and
- (b) any partner who is not a medical practitioner is either—
 - (i) an HSS employee;
 - (ii) an Article 15B employee, a section 28C employee or a section 17C employee;
 - (iii) a health care professional who is engaged in the provision of services under this Order; or

- (iv) an individual falling within Article 15C(1)(b)(iii).
- (3) The conditions referred to in paragraph (1)(c) in relation to a company are that—
 - (a) at least one share in the company is legally and beneficially owned by a medical practitioner; and
 - (b) any share which is not so owned is legally and beneficially owned by a person referred to in paragraph (2)(b)(i) to (iv).
- (4) Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.
- (5) In this Article—
 - “health care professional” has the same meaning as in Article 15C;
 - “HSS employee”, “Article 15B employee”, “section 28C employee” and “section 17C employee” have the same meaning as in Article 15C.

General medical services contracts: payments

- 57C.**—(1) The Department may give directions as to payments to be made under general medical services contracts.
- (2) A general medical services contract must require payments to be made under the contract in accordance with directions for the time being in force under this Article.
 - (3) Without prejudice to the generality of the power under paragraph (1) directions under that paragraph may—
 - (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
 - (b) provide for payments to be made by reference to—
 - (i) any scheme or scale specified in the direction; or
 - (ii) a determination made by any person in accordance with factors specified in the direction;
 - (c) provide for the making of payments in respect of individual practitioners;
 - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Health and Social Services Board only if it is satisfied as to certain conditions)
 - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
 - (4) Before giving a direction under paragraph (1), the Department—
 - (a) shall consult any body appearing to it to be representative of persons to whose remuneration the direction would relate, and
 - (b) may consult such other persons as it thinks appropriate.
 - (5) References in this Article to payments include fees, allowances, reimbursements, loans and repayments.

General medical services contracts: prescription of drugs, etc.

- 57D.**—(1) A general medical services contract shall contain provision requiring the contractor or contractors to comply with any directions given by the Department for the purposes of this Article

as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract.

(2) A direction under this Article shall, subject to paragraph (3), be given by regulations.

(3) A direction under this Article may be given by an instrument in writing where it gives effect to a request made in writing to the Department by a person who is a holder of a Community marketing authorisation or United Kingdom marketing authorisation in respect of the drug, medicine or other substance to which the request relates.

(4) A direction under this Article given by an instrument in writing may be varied or revoked by a further direction under this Article (whether given by an instrument in writing or by regulations).

(5) In this Article “Community marketing authorisation” and “United Kingdom marketing authorisation” have the meanings given by regulation 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 (S.I. 1994/3144).

General medical services contracts: other required terms

57E.—(1) A general medical services contract shall contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

(2) Regulations under paragraph (1) may in particular make provision as to—

- (a) the manner in which, and standards to which, services are to be provided;
- (b) the persons who perform services;
- (c) the persons to whom services are to be provided;
- (d) the variation of contract terms (other than terms required by or under this Part);
- (e) rights of entry and inspection (including inspection of clinical records and other documents);
- (f) the circumstances in which, and the manner in which, the contract may be terminated;
- (g) enforcement;
- (h) the adjudication of disputes.

(3) Regulations making provision under paragraph (2)(c) shall make provision as to the circumstances in which a contractor or contractors—

- (a) shall or may accept a person as a patient to whom services are provided under the contract; or
- (b) may decline to accept a person as such a patient; or
- (c) may terminate his or their responsibility for a patient.

(4) Regulations under paragraph (2)(d) may—

- (a) make provision as to the circumstances in which a Health and Social Services Board may impose a variation of contract terms;
- (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.

(5) Regulations making provision of the kind described in paragraph (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

(6) Regulations under paragraph (1) shall make provision as to the right of patients to choose the persons from whom they are to receive services.

General medical services contracts: disputes and enforcement

57F.—(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract.

(2) Regulations under paragraph (1) may make provision—

- (a) for the referral of the terms of the proposed contract to the Department; and
- (b) for the Department, or a person appointed by it, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general medical services contract to be regarded as a health and social services body for any purposes of Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991, in circumstances where he or they so elect.

(4) Regulations under paragraph (3) may include provision as to the application of Article 8 of that Order in cases where—

- (a) persons practising in partnership elect to become a health and social services body; and
- (b) there is a change in the membership of the partnership.

(5) Where—

- (a) by virtue of regulations under paragraph (3), paragraph (8) of Article 8 of that Order applies in relation to a general medical services contract, and
- (b) a direction as to payments is made under that paragraph in relation to the contract,

the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.^{F76]}

Annotations:

Amendments (Textual)

F76 2004 NI 2

[^{F77} Persons performing primary medical services

Annotations:

Amendments (Textual)

F77 2004 NI 2

Persons performing primary medical services

57G^{F78}.—(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service for which a Health and Social Services Board is responsible unless that professional is included in a list maintained under the regulations by the Health and Social Services Board.

(2) For the purposes of this Article—

- (a) “health care professional” has the same meaning as in Article 15C;
- (b) a Health and Social Services Board is responsible for a primary medical service if it provides the service, or secures provision of the service, under or by virtue of Article 56.

(3) Regulations under paragraph (1) may make provision in relation to such lists and in particular as to—

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- (a) the preparation, maintenance and publication of a list;
 - (b) eligibility for inclusion in a list;
 - (c) applications for inclusion (including provision as to the Health and Social Services Board to which an application must be made, and for the procedure for applications and the documents to be supplied on application);
 - (d) the grounds on which an application for inclusion may or must be granted or refused;
 - (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits);
 - (f) suspension or removal from a list or references to the Tribunal (including the grounds for and consequences of suspension or removal, or reference);
 - (g) circumstances in which a person included in a list may not withdraw from it;
 - (h) payments to be made in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Department, or a person appointed by it);
 - (i) the criteria to be applied in making decisions under the regulations;
 - (j) appeals against decisions made by a Health and Social Services Board under the regulations;
 - (k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references.
- (4) Regulations making provision as to the matters referred to in paragraph (3)(k) may in particular authorise the disclosure of information—
- (a) by a Health and Social Services Board to the Department; and
 - (b) by the Department to a Health and Social Services Board.^{F79}

Annotations:

Amendments (Textual)

F78 mod. by SR 2004/259

F79 2004 NI 2

[^{F80} Assistance and support

- 57H.**—(1) A Health and Social Services Board may provide assistance or support to—
- (a) any person providing, or proposing to provide primary medical services under a general medical services contract;
 - (b) any person providing, or proposing to provide, such services in accordance with Article 15B arrangements.
- (2) Assistance or support provided by a Health and Social Services Board under paragraph (1) shall be provided on such terms, including terms as to payment, as the Board thinks fit.
- (3) In this Article “assistance” includes financial assistance.]

Annotations:

Amendments (Textual)

F80 2004 NI 2

Art 58 rep. by 1988 NI 24

Loans to general medical practitioners

59. The Ministry may, subject to and in accordance with the provisions of Schedule 9, make loans to practitioners providing^{F81} primary medical services].

Annotations:

Amendments (Textual)

F81 2004 NI 2

Prohibition of sale of, and compensation for loss of right to sell, medical practices

60. Schedule 10 shall have effect with respect to the prohibition of the sale of, ...^{F82}, the goodwill of medical practices.]

Annotations:

Amendments (Textual)

F82 1978 NI 26

General Dental Services, General Ophthalmic Services and Pharmaceutical Services

Arrangements for general dental services

61.—(1) Every Health and Social Services Board shall, in accordance with regulations, make arrangements in respect of its area with dental practitioners under which any person for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances, and the services provided in accordance with the arrangements are in this Order referred to as “general dental services”.

(2) Subject to paragraph (4), regulations may make provisions as to the arrangements to be made under paragraph (1), and shall include provision—

- (a) for the preparation, publication and maintenance of lists of dental practitioners who undertake to provide general dental services;
- (b)^{F83} for conferring a right, subject to [^{F84} ^{F85}paragraphs (2A) and (2AA)]^{F86}, to any provision made under Article 64C]^{F87}, to regulations under Article 4 of the Health and Medicines (Northern Ireland) Order 1988] and to] the provisions of this Order relating to the disqualification of persons providing services, on any dental practitioner who wishes to be included in any such list, to be so included;

Sub-para. (c) rep. by 1997 NI 7

- (d) for the making and recovery by persons providing general dental services of charges in respect of—
 - (i) the extra expense involved in the supply, at the request of the person supplied, as part of those services, of any dental appliance which is of a more expensive type than that which would normally be supplied, or the replacement or repair of any such appliance; or
 - (ii) the replacement or repair of any dental appliance supplied as part of the services aforesaid, if it is determined in the prescribed manner that the replacement or repair

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is necessitated by an act or omission of the person supplied or (if it occurred when he was under sixteen years of age) of his or of the person having charge of him when it occurred; and

^{F88}(e) for [^{F89} the determination of] the remuneration of dental practitioners providing general dental services.

(2A) *No dental practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in the lists mentioned in paragraph (2)(a) unless he satisfies the Health and Social Services Board in whose area his surgery is, or is to be, situated that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general dental services in the Board's area.]*

[^{F85}(2AA) Regulations may make the exercise of the right conferred by virtue of sub-paragraph (b) of paragraph (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in sub-paragraph (a) of that paragraph.]

[^{F90F91}(2B) Where the registration of a dental practitioner in the dentists register is suspended—

(a) by an order under section 32 of the Dentists Act 1984 (interim suspension); or

(b) by a direction or an order of the Health Committee under that Act (health cases),

the suspension shall not terminate any arrangements made with him for the provision of general dental services, but he shall not provide such services in person during the suspension.

(2C) Regulations under paragraph (2)(e) may provide for the making of payments in consequence of suspension to a dental practitioner whose registration is suspended as mentioned in paragraph (2B).]

(3) Subject to paragraph (4), regulations may make provision for the making and recovery of charges (subject to such safeguards as the Ministry may consider necessary) by persons providing general dental services in respect of treatment which, on the ground of the nature of the treatment provided or such other special circumstances (whether related to the nature of the treatment or otherwise) as may be prescribed, justifies an extra charge.

(4) Before making any regulations under this Article, the Ministry shall consult such organisations as appear to the Minister to be representative of the dental profession.

Annotations:

Amendments (Textual)

F83 mod. by SR 2004/259

F84 SI 1981/432

F85 1991 NI 1

F86 [2001 c. 3 \(NI\)](#)

F87 1988 NI 24

F88 prosp. rep. by 1984 NI 8

F89 1978 NI 26

F90 1986 NI 24

F91 prosp. subst. by SI 2005/2011

Arrangements for general ophthalmic services

62.—(1) Every Health and Social Services Board shall, in accordance with regulations, make arrangements in respect of its area with medical practitioners having the prescribed qualifications,^[F92] and ophthalmic opticians for securing the testing^[F93] by them of the sight—]

[^{F93}(a) of a child;

(b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or

(c) of a person of such other description as may be prescribed.]

and the services provided in accordance with such arrangements are in this Order referred to as “general ophthalmic services”.

(2) Subject to paragraph (3), regulations may make provision as to the arrangements to be made under this Article, and shall include provision—

(a) for the preparation and publication of lists of medical practitioners,[^{F92} and ophthalmic] opticians respectively who undertake to provide general ophthalmic services;

(b) ^{F94} for conferring a right, subject[^{F95} to any provision made under Article 64C and] to the provisions of this Order relating to the disqualification of persons providing services, on any medical practitioner having the prescribed qualifications,[^{F92} or ophthalmic] optician who wishes to be included in the appropriate list, to be so included;

(c) for conferring on any medical practitioner, who is dissatisfied with a determination that he does not possess the qualifications prescribed under this Article, a right of appeal to a committee appointed by the Ministry, and for making provision for any matter for which it appears to the Ministry to be necessary or expedient to make provision in consequence of the conferring of that right;

(d) for conferring on any person a right to choose, in accordance with the prescribed procedure, the medical practitioner or ophthalmic optician by whom his sight is to be tested or from whom any prescription for the supply of optical appliances is to be obtained;

Sub-para. (e) rep. by 1984 NI 8

^{F96}(f) for [^{F97} the determination of] the remuneration of persons providing or participating in the provision of general ophthalmic services.

(3) Before making any regulations under this Article, the Ministry shall consult such organisations as appear to the Minister to be representative of medical practitioners practising as ophthalmic medical practitioners,[^{F92} and ophthalmic] opticians.

[^{F93}(4) In this Article—

“child” means—

(a) a person who is under the age of 16 years; or

(b) a person who is under the age of 19 years and receiving qualifying full-time education; and

“qualifying full-time education” means full-time instruction—

(a) at an educational establishment recognised by the Department as being, or as comparable to, a school, college or university; or

(b) by other means accepted as comparable by the Department,

and for the purposes of this definition regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

(5) Regulations under this Article may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this paragraph, may direct that they shall be calculated—

(a) by a method set out in the regulations;

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- (b) by a method described by reference to a method of calculating or estimating income or capital specified in a transferred provision other than this Article or by reference to such a method but subject to prescribed modifications;
 - (c) by reference to an amount applicable for the purposes of a payment under a transferred provision; or
 - (d) by reference to the person's being or having been entitled to payment under a transferred provision.
- (6) Descriptions of persons may be prescribed for the purposes of paragraph (1) by reference to any criterion and, without prejudice to the generality of this paragraph, by reference to any of the following criteria—
- (a) their age;
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
 - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
 - (d) their receipt of benefit in money or in kind under any transferred provision or their entitlement to receive any such benefit; and
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (7) Regulations which refer to a transferred provision may direct that the reference is to be construed as a reference to that provision—
- (a) as it has effect at the time when the regulations are made; or
 - (b) both as it has effect at that time and as amended subsequently.
- (8) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
 - (b) who is shown during the testing or within a prescribed time after it to fall within paragraph (1),
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this Article;
 - (ii) for the purposes of remuneration in respect of the testing; and
 - (iii) for any such other purpose as may be prescribed,
- as a testing of sight under this Order.
- (9) Regulations shall define the services for the provision of which arrangements under this Article are to be made and the services so defined are in this Order referred to as “general ophthalmic services”.]

Annotations:

Amendments (Textual)

- F92** 1984 NI 8
- F93** 1988 NI 24
- F94** mod. by SR 2004/259
- F95** [2001 c. 3 \(NI\)](#)
- F96** prosp. rep. by 1984 NI 8

F97 1978 NI 26

Arrangements for pharmaceutical services

[^{F99} (1) Every Health and Social Services Board shall, in accordance with regulations, make arrangements in respect of its area for the [^{F100} provision] to persons who are in that area of—

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions—
 - (i) in providing any service in pursuance of this Order; or
 - (ii) in the health services established in pursuance of section 1 of the National Health Service Act 1977 or section 1 of the National Health Service (Scotland) Act 1978 ; or
 - (iii) in the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony);
- (b) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of such functions;
- (c) [^{F101}listed drugs and medicines and listed appliances which are ordered for those persons by [^{F102} a pharmacist or] a prescribed description of registered nurse, midwife or health visitor in pursuance of such functions; and]
- (d) [^{F100}such services as may be prescribed;]

[^{F103}and the services provided in accordance with the arrangements are, together with additional pharmaceutical services provided in accordance with a direction under Article 63A, referred to in this Order as “pharmaceutical services”.]

[^{F104}(2) Regulations shall provide for securing that arrangements made by a Health and Social Services Board under paragraph (1) will enable persons in the Board's area for whom drugs, medicines or appliances mentioned in that paragraph are ordered as there mentioned [^{F100}, or to whom services mentioned in paragraph (1)(c) are to be provided] to receive them from persons with whom such arrangements have been made.

(2A) The regulations shall include provision—

- (a) for the preparation, publication and maintenance of lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services;
- (b) that an application to a Health and Social Services Board for inclusion in such a list shall be made in the prescribed manner and shall state—
 - (i) the [^{F100} pharmaceutical] services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
 - (ii) the premises from which he will undertake to provide those [^{F100} pharmaceutical] services;
- (c) that, except in prescribed cases—
 - (i) an application for inclusion in such a list by a person not already included; and
 - (ii) an application by a person already included in such a list for inclusion also in respect of [^{F100} pharmaceutical] services or premises other than those already listed in relation to him,

shall be granted only if the Health and Social Services Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons

included in the list of the^[F100] pharmaceutical] services or some of the^[F100] pharmaceutical] services, specified in the application; and

- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
- (i) has never provided from those premises, or
 - (ii) has ceased to provide from them,

the^[F100] pharmaceutical] services, or any of the^[F100] pharmaceutical] services, which he is listed as undertaking to provide from them.

(2B) The regulations may include provision—

- (a) that an application to a Health and Social Services Board may be granted in respect of some only of the^[F100] pharmaceutical] services specified in it;
- (b) that an application to a Health and Social Services Board relating to^[F100] pharmaceutical] services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provisions of those^[F100] pharmaceutical] services as may be prescribed;

^[F105](ba) that an application to a Health and Social Services Board by a person who qualified to have his name registered under the Pharmacy (Northern Ireland) Order 1976 by virtue of Article 8(2)(c) of that Order (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the^[F100] pharmaceutical] services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area;]

- (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
- (d) that, where the premises from which an application states that the applicant will undertake to provide^[F100] pharmaceutical] services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to^[F100] prescribed criteria]; and
- (e) that the prescribed body may give its approval subject to conditions.

(2C) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of paragraph (2A) or (2B).

(2D) The regulations shall be so framed as to preclude—

- (a) a person included in a list published under paragraph (2A)(a); and
- (b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in paragraph (2A)(c) should be granted or an appeal against such a decision brought by virtue of paragraph (2C) should be allowed.]

(3) Before making any regulations under this Article, the Ministry shall consult such organisations as appear to the Minister to be representative of the pharmaceutical profession.

(4) In this Article “listed” means included in a list for the time being approved for the purposes of this Article by the Department.]

Annotations:

Amendments (Textual)

- F98** mod. by SR 2004/259
- F99** 1978 NI 26
- F100** 1991 NI 1
- F101** 1992 NI 18
- F102** 2003 NI 9
- F103** 1997 NI 7
- F104** 1986 NI 20
- F105** SR 1987/457

[^{F106} Arrangements for providing additional pharmaceutical services

63A.—(1) The Department may—

- (a) give directions to a Health and Social Services Board requiring it to arrange for the provision to persons in its area of additional pharmaceutical services; or
- (b) by giving directions to a Health and Social Services Board authorise it to arrange for such provision if it wishes to do so.

(2) Directions under this Article may make different provision in relation to different services specified in the directions.

(3) The Department must publish any directions under this Article in the Drug Tariff or in such other manner as it thinks appropriate.

(4) In this Article—

“additional pharmaceutical services”, in relation to directions, means such services (of a kind that do not fall within Article 63) as may be specified in the directions; and

“Drug Tariff” means the Drug Tariff published under regulation 40 of the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973 or under any corresponding provision replacing, or otherwise derived from, that regulation.]

Annotations:

Amendments (Textual)

- F106** 1997 NI 7

[^{F107} Terms and conditions etc.

63B.—(1) Directions under Article 63A may require the Health and Social Services Board to which they apply, when making arrangements—

- (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;
- (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.

(2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.

(3) Different arrangements may be made with respect to—

- (a) the provision of the same service by the same person but in different circumstances; or

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(b) the provision of the same service by different persons.

(4) A Health and Social Services Board must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.

(5) After making any arrangements, a Health and Social Services Board must publish, in such manner as the Department may direct, such details of the arrangements as the Department may direct.

(6) In this Article, “pharmaceutical list” means, subject to any provision of the directions in question, a list—

- (a) published by the Health and Social Services Board concerned, or by any other Health and Social Services Board, in accordance with regulations made under Article 63(2A)(a); or
- (b) published by any body in accordance with regulations made under section 27(2)(a) of the National Health Service (Scotland) Act 1978 or section 42(2)(a) of the National Health Service Act 1977.]

Annotations:

Amendments (Textual)

F107 1997 NI 7

Persons authorised to provide pharmaceutical services

64.—[^{F108}(1) Except as provided[^{F109} by or under regulations], an arrangement shall not be made by a Health and Social Services Board—

- (a) with a medical or dental practitioner, under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering[^{F110} primary medical services] or general dental services; or
- (b) with a person who is not a pharmacist, for the dispensing of medicines.

[^{F111}(1A) Regulations shall provide for the preparation and publication by a Health and Social Services Board of one or more lists of medical practitioners who are required or agree to provide drugs, medicines or listed appliances in the Board's area.

(1B) In paragraph (1A) “listed” has the same meaning as in Article 63.

(1C) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.]

[^{F108}(2) No arrangements for the provision of pharmaceutical services falling within Article 63(1)(c)[^{F111}, or additional pharmaceutical services provided in accordance with a direction under Article 63A,] shall be made with persons other than those who are pharmacists or are of a prescribed description.]

Annotations:

Amendments (Textual)

F108 1991 NI 1

F109 1986 NI 20

F110 2004 NI 2

F111 1997 NI 7

Supplementary provisions

..... F112

Annotations:

Amendments (Textual)

F112 prosp. inserted by 1984 NI 8

..... F113

Annotations:

Amendments (Textual)

F113 prosp. subst. by 2001 c. 3 (NI)

[^{F114}Indemnity cover

64C.—(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part VI practitioners hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

- (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;
- (b) for the removal from a list prepared by a Health and Social Services Board of a Part VI practitioner who does not within a prescribed period after the making of a request by the Board in the prescribed manner satisfy that Board that he holds approved indemnity cover.

(3) For the purposes of this Article—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Department or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part VI practitioner (or person who proposes to provide Part VI services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which

- (a) arises out of the provision of Part VI services in accordance with arrangements made by him with a Health and Social Services Board under this Part; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in paragraph 1(8) of Schedule 11;

“Part VI practitioner” means a person whose name is on a list;

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“personal injury” means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description; and

(b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.]

Annotations:

Amendments (Textual)

F114 2001 c. 3 (NI)

Disqualification of persons providing certain services

65. The provisions of Schedule 11 shall have effect in relation to the disqualification of persons providing services.

Former dispensary property, etc.

66. The provisions of Schedule 12 shall apply to any property which was transferred to and vested in the Northern Ireland General Health Services Board consequent on section 19 of the Health Services Act (Northern Ireland) 1948 and transferred to and vested in the Ministry by virtue of section 6(1)(b) of the Health Services (Amendment) Act (Northern Ireland) 1967 .

PART VII

**CO-OPERATION WITH GOVERNMENT DEPARTMENTS,
PUBLIC BODIES AND VOUNTARY ORGANISATIONS, ETC.**

Co-operation between Health and Social Services Boards, district councils, etc.

67. In exercising their respective functions, Health and Social Services Boards^{F115}, HSS trusts^{F116}, special agencies], district councils, Education and Library Boards, ^{F117} and] the Northern Ireland Housing Executive ...^{F118} shall co-operate with one another in order to secure and advance the health and social welfare of the people of Northern Ireland.

Annotations:

Amendments (Textual)

F115 1991 NI 1

F116 1990 NI 3

F117 1975 NI 2

F118 1975 NI 2

Supply of goods and services to certain persons and bodies

68.—(1) The Ministry may and^[F119] a body to which this Article applies] may, and if directed by the Ministry, shall—

- (a) purchase, store and supply to^[F120] persons—
 - ^[F120](i) providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, or
 - (ii) providing, in accordance with Article 15B arrangements, personal medical services, personal dental services or other services of a kind that may be provided under Part VI,]
such equipment, goods or materials as may be prescribed;
- (b) purchase, store and supply to government departments and public bodies, any equipment, goods or materials of a kind which is used in the health or personal social services;
- (c) provide government departments and public bodies with any administrative, professional or other services of persons employed by the Ministry,^[F119] or a body to which this Article applies];
- (d) permit government departments and public bodies to use premises occupied for the purposes of the health or personal social services;

on such terms and conditions as may be agreed.

(2) In paragraph (1)(a) and (b), the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.

^[F119](3) This Article applies to the following bodies—

- (a) a Health and Social Services Board;
- (b) the Agency;
- (c) a special agency;
- (d) an HSS trust.]

Annotations:

Amendments (Textual)

F119 1991 NI 1

F120 1997 NI 7

Supply of goods and services between Health and Social Services Boards and district councils

69.—^[F121](1) For any purpose connected with matters concerning public or environmental health the Ministry may direct^[F121] a body to which this Article applies and a district council]

- (a) to make arrangements such as are mentioned in section 105 of the Local Government Act (Northern Ireland) 1972 in circumstances specified by the Ministry; and
- (b) to furnish to the Ministry or to the other party to the arrangements such information as appears to the Ministry to be expedient for purposes of the arrangements;

and^[F121] that body] and the district council shall comply with any such direction.

^[F121](2) This Article applies to the following bodies—

- (a) a Health and Social Services Board;

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- (b) a special agency;
- (c) an HSS trust.]

Annotations:

Amendments (Textual)

F121 1991 NI 1

Assistance to bodies providing certain housing accommodation, etc.

70. The Ministry may make a contribution of such amount as it considers appropriate towards any expenditure incurred by the Northern Ireland Housing Executive or a housing association in respect of the provision, maintenance and management of housing accommodation for, or the provision of special facilities for, persons in need.

Arrangements with and assistance to voluntary organisations

Para. (1) rep. by 1992 NI 20

(2) The Ministry may, on such terms and subject to such conditions as it may, with the approval of the Ministry of Finance, determine, give assistance by way of grant or loan or partly in one way and partly in the other, to a voluntary organisation providing services similar or related to any of the health or personal social services.

Para. (3) rep. by 1992 NI 20

Arts. 72, 73 rep. by 1995 NI 2

PART IX

DISSOLUTION OF CERTAIN BODIES, ETC.

Art. 74 rep. by SLR 1980

Transfer of assets and liabilities

Para. (1) rep. by SLR 1980

(2) In this Article and Article 77 “health or welfare purposes” means the purposes of the following Acts—

- (i) the Health Services Act (Northern Ireland) 1971 ;
- (ii) the Welfare Services Act (Northern Ireland) 1971 ;
- (iii) the Children and Young Persons Act (Northern Ireland) 1968 ;
- (iv) the Adoption Act (Northern Ireland) 1967 ;
- (v) the Public Health Act (Northern Ireland) 1967 ;
- (vi) the Education Act (Northern Ireland) 1947 .

Para. (3) rep. by SLR 1980

(4) Stamp duty shall not be chargeable on this Order or on any instrument or other document executed for the purposes of transferring property to the Ministry under paragraph (1).

(5) A certificate issued by the Ministry that any asset or liability has, by virtue of paragraph (1), been transferred to it shall be accepted as evidence of such transfer and, upon lodgment of such a certificate relating to land, the certificate shall be registered in the Registry of Deeds or, in the case of registered land, the title to which the certificate relates shall be registered in the Land Registry.

Supplementary and transitional provisions

76.—(1) The Ministry may, by order, make such incidental, consequential, transitional or supplemental provision as appears to it to be necessary or expedient for the general or any particular purposes of this Order or in consequence of any of the provisions thereof or for giving full effect thereto including provision for any of the matters set out in Schedule 13, and nothing in any other provision of this Order shall be construed as prejudicing the generality of this paragraph.

(2) Without prejudice to any provision of the Local Government Act (Northern Ireland) 1972 , paragraph (1) and Schedule 13 shall have effect in connection with the dissolution of a health or welfare authority by virtue of that Act.

Arts. 77, 78 rep. by 1991 NI 1

PART X

ENDOWMENTS AND OTHER TRUST PROPERTY, ETC.

Transfer of endowments, etc., held by management committees

Para.(1) rep. by SLR 1980

(2) Schedule 14 shall apply to all endowments and income thereof transferred to a Health and Social Services Board under paragraph (1).

(3) The property and income, other than that referred to in paragraph (2), transferred to a Health and Social Services Board under paragraph (1) shall be held by that Board—

- (a) where the property was held by a management committee for a specific purpose, on trust for that purpose;
- (b) where the property was held for the general purposes of a particular hospital or of an establishment maintained for the training of persons requiring special care within the meaning of the Mental Health Act, on trust for the general purposes of that hospital or establishment;
- (c) where the property was not held for a purpose limited as in sub-paragraph (a) or (b), on trust for such purposes relating to services provided under this Order in or in relation to hospitals as the Board thinks fit; so however that in exercising its discretion under this sub-paragraph the Board shall secure as far as is reasonably practicable that the objects of the trust are not prejudiced.

Transfer of property held on trust by Northern Ireland Hospitals Authority

Para.(1) rep. by SLR 1980

(2) Article 79(3) shall apply to property and income transferred to any Health and Social Services Board under this Article as it applies to property and income transferred to any Health and Social Services Board under that Article.

Transfer of certain property held by health and welfare authorities

Para.(1) rep. by SLR 1980

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(2) The property and income transferred under paragraph (1) shall be held by the Health and Social Services Board and administered by that Board in accordance with the terms of the agreement made between the authority concerned and the organisation or, as the case may be, the trustees.

(3) An agreement made under section 42(4)^{F122} of, or under section 28^{F123} of, the said Acts of 1971 may be varied in the like manner and subject to the like consents and conditions as are provided for in, or by virtue of, that section.

(4) Where the Attorney-General is satisfied that an organisation is no longer in existence or, as the case may be, the trustees are dead, he may consent to the variation of the terms of an agreement under paragraph (3).

Annotations:

Amendments (Textual)

F122 1971 (c.1)

F123 1971 (c.2)

Transfer of other property held on trust by health and welfare authorities

Para.(1) rep. by SLR 1980

(2) The property and income transferred under paragraph (1) shall be held by the Health and Social Services Board—

- (a) where the property was held by a health or welfare authority for a specific purpose, on trust for that purpose;
- (b) where the property was not held for a purpose limited as in sub-paragraph (a), on trust for such purposes relating to services provided under this Order as the Board may think fit; so however that in exercising its discretion under this sub-paragraph the Board shall secure as far as is reasonably practicable that the objects of the trust are not prejudiced.

Power of trustees to make payments to Health and Social Services Boards

83.—^{F124}(1) Where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any hospital or service administered by a Health and Social Services Board or an HSS trust, the trust instrument shall be construed as authorising or (as the case may be) requiring the trustees to apply the trust property, to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate authority.

(1A) In paragraph (1) “the appropriate authority” means—

- (a) where the hospital or service is administered by a Health and Social Services Board, that Board;
- (b) where the hospital or service is administered by an HSS trust and trustees have been appointed for that trust under Article 16 of the 1991 Order, those trustees;
- (c) where the hospital or service is administered by an HSS trust and sub-paragraph (b) does not apply, the HSS trust.]

(2) Any sums paid to a Health and Social Services Board under paragraph (1) in respect of property held on trust to which section 39 of the Health Services Act (Northern Ireland) 1971 applied shall be applied by it as if such sums were income from endowments transferred to that Board under Article 79 and the provisions of Schedule 14 shall have effect accordingly.

Annotations:

Amendments (Textual)

F124 1991 NI 1

Power of Ministry in cases of difficulty

84. Where any difficulty arises under Articles 79 to 83 in the allocation to Health and Social Services Boards of any property, the Ministry may determine to which Health and Social Services Boards the property or any part thereof shall be transferred.

Power of the Health and Social Services Boards to accept property on trust

85.—(1) A Health and Social Services Board^[F125] or a special agency] may accept, hold and administer any property on trust for purposes relating to any service which it is^[F125] that body's] function to make arrangements for, administer or provide.

^[F126](2) For the purposes of giving effect to the provisions of any will, deed or other like instrument

- (a) any reference therein to a management committee, a health authority or a welfare authority shall be construed as a reference to the appropriate Health and Social Services Board;
- (b) any reference therein to a hospital or other establishment or facility managed by a Health and Social Services Board shall be construed as a reference to that Board;
- (c) any reference therein to a hospital or other establishment or facility managed by an HSS trust shall be construed as a reference to that trust.]

(3) Nothing in Article 87 shall affect the operation of any such provisions as are referred to in paragraph (2).

Annotations:

Amendments (Textual)

F125 1990 NI 3

F126 1991 NI 1

Certain property of voluntary organisations

86.—(1) Where any property is—

- (a) vested in any voluntary organisation formed for the purpose of providing any services similar or related to services which Health and Social Services Boards^[F127] or HSS trusts] are authorised or required to provide; or
- (b) held by any persons on trust for such an organisation or for any specific purposes connected with such an organisation;

then, notwithstanding any enactment or rule of law or anything contained in the constitution or rules of the organisation or in any order of court, deed, will or other instrument relating to the organisation, that property may, with the approval of the Attorney-General, be transferred to a Health and Social Services Board^[F127], an HSS trust or the trustees for an HSS trust (in this Article referred to as “the transferee”)] on such terms as may be agreed between^[F127] the transferee] and the organisation or, as the case may be, the trustees with a view to the property being held or used by^[F127] the transferee] for purposes similar to the purposes for which it was previously held or used.

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(2) The power to make an agreement under paragraph (1) shall be construed as including power, exercisable in the like manner and subject to the like consents and conditions, to vary the terms of that agreement.

(3) Where the Attorney-General is satisfied that an organisation is no longer in existence or, as the case may be, the trustees are dead, he may consent to the variation of the terms of an agreement under paragraph (2).

Annotations:

Amendments (Textual)

F127 1991 NI 1

PART XI

FINANCIAL PROVISIONS

Expenses of the Health and Social Services Boards, the Agency and Staffs Council

87.—(1) There shall be paid by the Ministry to the Health and Social Services Boards^[F128], the special agencies^{],}^[F129] and the Agency] such sums as may be necessary to defray the expenditure of those bodies, being expenditure approved by the Ministry.

^[F130](2) In relation to expenditure under the Adoption (Northern Ireland) Order 1987 or the Children (Northern Ireland) Order 1995, paragraph (1) shall have effect with the omission of the words “being expenditure approved by the Ministry”.]

(3) Payments made under this Article shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Ministry may determine.

Annotations:

Amendments (Textual)

F128 1990 NI 3

F129 1991 NI 1

F130 1995 NI 2

Regulation of financial arrangements of certain bodies

88.—(1) The Ministry may give directions to each Health and Social Services Board^[F131], each special agency^{],}^[F132] or the Agency] restricting the making of payments by or on behalf of each of those bodies otherwise than on such authorisation and subject to such conditions as may be specified in the directions, but such provision may be made subject to such exceptions as may be so specified.

(2) Directions under paragraph (1) may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Ministry thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.

Annotations:

Amendments (Textual)

F131 1990 NI 3

F132 1991 NI 1

Remuneration of members of bodies and certain other persons

89.—(1) The Ministry may pay such remuneration and such allowances as the Ministry may, with the approval of the Ministry of Finance^{F133}, determine to—

[^{F134}(a) members of—

(i) any body established or appointed under this Order;

(ii) a special agency;

(iii) a Health and Social Services Council established under Article 4 of the 1991 Order;]

(b) such other persons as may be prescribed.

(2) Allowances shall not be paid under paragraph (1) except in connection with the performance of such functions and in such circumstances, as the Ministry may determine.

(3) Any payments made under paragraph (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Ministry may determine.

(4) In this Article “member” includes a member of a committee or sub-committee of a body, whether he is a member of the body or not.

Annotations:

Amendments (Textual)

F133 SR 1976/281

F134 1991 NI 1

[^{F135}**Accounts and audit: health and personal social services bodies**

90.—(1) Each body to which this Article applies shall—

(a) keep proper accounts and proper records in relation to the accounts; and

(b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

(a) be in such form; and

(b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Each body to which this Article applies shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

(a) the Department; and

(b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on every statement of accounts sent to him under this Article; and

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(b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) This Article applies to—

- (a) Health and Social Services Boards;
- (b) the Agency;
- (c) special agencies; and
- (d) HSS trusts.]

Annotations:

Amendments (Textual)

F135 2003 NI 5

Accounts of endowments and other property held on trust

91.—(1) Each body to which this Article applies shall—

- (a) keep proper accounts of endowments and other property held on trust by the body and proper records in relation to the accounts; and
- (b) prepare a statement of those accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Each body to which this Article applies shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him under this Article; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) This Article applies to—

- (a) Health and Social Services Boards;
- (b) special agencies;
- (c) HSS trusts; and
- (d) the trustees for an HSS trust appointed in pursuance of Article 16 of the 1991 Order.^{F136}

Annotations:

Amendments (Textual)

F136 2003 NI 5

[^{F137}Studies for improving economy, etc. in services

92B.—(1) The Department may [^{F138} authorise any person] to undertake comparative or other studies to promote economy, efficiency and effectiveness in the provision of services by a body to which this Article applies.

(2) The Department shall—

- (a) consult with the Comptroller and Auditor General for Northern Ireland on the nature and scope of studies to be undertaken under this Article; and
- (b) on request, furnish to the Comptroller and Auditor General for Northern Ireland all material relevant to any studies undertaken under this Article.

(3) This Article applies to—

- (a) Health and Social Services Boards;
- (b) the Agency;
- (c) special agencies;
- (d) HSS trusts;

Sub-para. (e) rep. by 2001 c. 3 (NI)

(f) the trustees for an HSS trust appointed in pursuance of Article 16 of the 1991 Order.

(4) Paragraphs (5) to (8) apply to [^{F138} a person authorised under paragraph (1) ("the authorised person")] in undertaking any studies under this Article.

(5) The [^{F138} authorised person] shall be entitled—

- (a) to require access at all reasonable times to all such documents relating to a body to which this Article applies as appear to him necessary for the purposes of the studies;
- (b) to require from any person holding or accountable for any such document such information and explanation as he thinks necessary for the purposes of the studies;
- (c) without prejudice to sub-paragraph (b), to require any officer or member of a body to which this Article applies to give him such information or explanation as he thinks necessary for the purposes of the studies;
- (d) to require any such person as is mentioned in sub-paragraph (b) or (c) to attend before him in person to give any such information or explanation as is so mentioned.

Para. (6) rep. by 2001 c. 3 (NI)

(7) Without prejudice to paragraph (5), a body to which this Article applies shall provide the [^{F138} authorised person] with every facility and all information which he may reasonably require for the purposes of the studies.

(8) Any person who without reasonable excuse fails to comply with any requirement of the [^{F138} authorised person] under paragraph (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and if the failure continues after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.]

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Annotations:

Amendments (Textual)

F137 1994 NI 2

F138 2003 NI 5

Northern Ireland share of expenses of certain United Kingdom Councils, etc.

93.—(1) The Ministry shall pay to the Council for the Education and Training of Health Visitors and the Central Council for Education and Training in Social Work such sums as may be necessary to defray that portion of the expenditure incurred by each of those Councils, with the approval of the Health Ministers (as defined in the Health Visiting and Social Work (Training) Act 1962), as is deemed to be incurred in relation to Northern Ireland, so far as that expenditure exceeds any income derived from the exercise of the Council's functions and is not met out of money provided by the Parliament of the United Kingdom.

(2) The Ministry may pay to each of the committees appointed under paragraph (8) of Schedule 2 to the Health Visiting and Social Work (Training) Act 1962 to act as advisory committees in Northern Ireland to each of the Councils established under that Act such sums as may be necessary to defray the expenditure incurred by the committee with the approval of the Ministry.

(3) The Ministry may pay to any other body established by or under any Act of the Parliament of the United Kingdom and exercising any functions in relation to services provided under this Order, such sums as may be necessary to defray that portion of that body's expenditure which may be deemed to be incurred in relation to Northern Ireland and is not met out of money provided by the Parliament of the United Kingdom.

(4) The Ministry shall pay to the Health Education Council Limited such sums as may be necessary to defray that portion of the Council's expenditure which may be deemed to be incurred in relation to Northern Ireland and is not met out of money provided by the Parliament of the United Kingdom.

Expenses of the Ministry

94.—(1) The expenses incurred by the Ministry under this Order and any increase, attributable to any provision of this Order, in the sums which are to be defrayed under any other enactment may be defrayed out of money hereafter appropriated for the purpose of meeting such expenses or, to such extent (if any) as the Ministry of Finance directs, by means of sums charged on and issued out of the Consolidated Fund.

(2) The Ministry of Finance may borrow money for the purpose of providing money for issues out of the Consolidated Fund under paragraph (1).

PART XII

MISCELLANEOUS AND GENERAL

Miscellaneous

Exercise, in certain cases, of right of choice of person by whom services are to be provided

95. Where a right to choose the person by whom services are to be provided under this Order is conferred by or under any provision of this Order, that right shall, in the case of such persons as may be prescribed, be exercisable on their behalf by other prescribed persons.

Preservation of associations of denominational hospitals

96. Where the character and associations of any hospital through which services are being or are to be provided under this Order are such as to link that hospital with a particular religious denomination, regard shall be had in the general administration of the hospital and in the making of appointments to the Health and Social Services Board administering the hospital to the preservation of the character and associations of the hospital.

Protection for officer acting in execution of duty

97.—(1) [^{F139}An officer of—

- (a) a Health and Social Services Board;
- (b) a special agency;
- (c) the Agency;
- (d) an HSS trust,^[F140 or]

^[F140(e)] [^{F140}a Health and Social Services Council,]

shall not be personally liable in respect of any act done by him in the execution of any function of any such body] and within the scope of his employment if he acted reasonably and in the honest belief that his duty required or empowered him to do it; but nothing in this paragraph shall be construed as relieving such a body of any liability in respect of acts of its officers.

(2) Where an action has been brought against an officer of a body such as is mentioned in paragraph (1) in respect of an act done by him in the execution or purported execution of any such function and the circumstances are such that he is not legally entitled to require that body to indemnify him, that body may nevertheless indemnify him against the whole or a part of any damages or costs which he may have been ordered to pay or may have incurred, if that body is satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty required or empowered him to do it.

Annotations:

Amendments (Textual)

F139 1991 NI 1

F140 2001 c. 3 (NI)

Services free of charge

98.—(1) The services provided under this Order^[F141] or the 1991 Order^[F142] or the Health Services (Primary Care) (Northern Ireland) Order 1997] shall be free of charge, except where any provision contained in or made under this Order^[F142] or the Health Services (Primary Care) (Northern Ireland) Order 1997] expressly provides for the making and recovery of charges.

(2) The provisions of Schedule 15 shall have effect in relation to the making and recovery of certain charges and to the other matters mentioned in that Schedule.

Annotations:

Amendments (Textual)

F141 1991 NI 1

F142 SR 1999/11

^[F143]Charges in respect of accommodation provided by Department under Article 15

99.—(1) Where a person is provided under Article 15 with accommodation in premises provided by the Department, the Department shall recover from him the amount of the payment which he is liable to make in accordance with the following provisions of this Article.

(2) Subject to the following provisions of this Article, the payment which a person is liable to make for any such accommodation shall be in accordance with a standard rate determined by the Department for that accommodation and that standard rate shall represent the full cost to the Department of providing that accommodation^[F144], other than any costs in respect of nursing care by a registered nurse (within the meaning given by Article 36(4A)) at that accommodation].

(3) Subject to paragraph (4), where a person for whom such accommodation is provided, or proposed to be provided, satisfies the Department that he is unable to pay for the accommodation at the standard rate, the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to pay for the accommodation.

(4) The liability of any person to pay for accommodation under this Article may be reduced by reason of any work which he performs and which assists materially in the management of the premises.

(5) Regulations may make provision for the assessment, for the purposes of paragraph (3), of a person's ability to pay.

(6) The Department may, on each occasion when it provides accommodation mentioned in paragraph (1) for any person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the payments required from him for his accommodation during a period commencing when the Department began to provide the accommodation for him and ending not more than 8 weeks after that.]

Annotations:

Amendments (Textual)

F143 1991 NI 1

F144 2002 c. 9 (NI)

Liability to maintain spouse^[F145] or civil partner] and children

100.—(1) For the purposes of this Order—

- (a) a man shall be liable to maintain his^{F145} spouse or civil partner] and his children; and
- (b) a woman shall be liable to maintain her^{F145} spouse or civil partner] and her children.

^{F146}(2) Any reference in paragraph (1) to a person's children shall be construed in accordance with Article 155 of the Children (Northern Ireland) Order 1995.]

Annotations:

Amendments (Textual)

F145 SR 2005/479

F146 1995 NI 2

Recovery of cost of accommodation for persons in need

101.—(1) [^{F147}Where under Article 15 or 36 accommodation is provided, or proposed to be provided, for any person] (in this Article referred to as a “person accommodated”), the Ministry may bring proceedings upon complaint under^{F148} Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981] against any other person who, for the purposes of this Order, is liable to maintain the person accommodated.

(2) On hearing a complaint under this Article, the court shall have regard to all the circumstances and, in particular, to the resources of the defendant, and may order the defendant to pay such sum, weekly or otherwise, as the court may consider appropriate.

(3) In this Article, “the court” means the court of summary jurisdiction having jurisdiction in the place where the accommodation was provided or applied for.

(4) Payments under paragraph (2) shall be made—

- (a) to the Ministry, in respect of the cost of accommodation, whether provided before or after the making of the order; or
- (b) to the applicant for accommodation or any other person, being a person accommodated; or
- (c) to such other person as appears to the court expedient in the interests of the person accommodated;

or as to part in one such manner and as to part in another, as may be provided by the order.

(5) The payments to be made pursuant to an order under this Article shall (irrespective of the recipient thereof) inure for the benefit of the Ministry.

Annotations:

Amendments (Textual)

F147 1991 NI 1

F148 1981 NI 26

^{F149}Recovery of cost of accommodation where persons have disposed of assets

101A.—(1) Subject to the following provisions of this Article, where—

- (a) accommodation is provided under Article 15 or 36 for any person; and
- (b) that person knowingly and with the intention of avoiding charges for the accommodation

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- (i) has transferred any asset to which this Article applies to some other person or persons not more than 6 months before the date on which he begins to reside in such accommodation; or
 - (ii) transfers any such asset to some other person or persons while residing in the accommodation; and
- (c) either—
- (i) the consideration for the transfer is less than the value of the asset; or
 - (ii) there is no consideration for the transfer,

the person or persons to whom the asset is transferred by the person for whom the accommodation is provided shall be liable to pay to the Department the difference between the amount assessed as due to be paid for the accommodation by the person for whom the accommodation is provided and the amount which the Department receive from him for it.

(2) This Article applies to cash and any other asset which falls to be taken into account for the purpose of assessing under^{F150} Article 36 or 99 the ability of the person for whom accommodation is provided to pay for it or (as the case may be) to make a refund to the Department in respect of it].

(3) Paragraph (1) shall have effect in relation to a transfer by a person who leaves accommodation provided under Article 15 or 36 and subsequently resumes residence in such accommodation as if the period of 6 months mentioned in sub-paragraph (b)(i) were a period of 6 months before the date on which he resumed residence in such accommodation.

^{F150}(3A) If the Department so directs, paragraph (1) shall not apply in such cases as may be specified in the direction.]

(4) Where a person has transferred an asset to which this Article applies to more than one person, the liability of each of the persons to whom it is transferred shall be in proportion to the benefit accruing to him from the transfer.

(5) A person's liability under this Article shall not exceed the benefit accruing to him from the transfer.

(6) Subject to paragraph (7), the value of any asset to which this Article applies, other than cash, which has been transferred shall be taken to be the amount of the consideration which would have been realised for it if it had been sold on the open market by a willing seller at the time of the transfer.

(7) For the purpose of calculating the value of an asset under paragraph (6) there shall be deducted from the amount of the consideration—

- (a) the amount of any incumbrance on the asset; and
- (b) a reasonable amount in respect of the expenses of the sale.]

Annotations:

Amendments (Textual)

F149 1986 NI 24

F150 1991 NI 1

Art. 102 rep. by 1995 NI 2

Failure to maintain

103.—(1) Where a person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain for the purposes of this Order and, in consequence of his refusal or neglect, the Ministry provides or secures the provision of accommodation under Article 15 for

that person or any other person, he shall be guilty of an offence and shall be liable on summary conviction—

- (a) where the accommodation was provided for him, to imprisonment for a term not exceeding six months;
- (b) in any other case, to a fine not exceeding^[F151] level 3 on the standard scale] or to imprisonment for a term not exceeding six months, or to both.

(2) For the purposes of this Article, a person shall not be deemed to refuse or neglect to maintain himself or any other person by reason only of anything done or omitted in furtherance of a trade dispute.

Annotations:

Amendments (Textual)

F151 1984 NI 3

Administrative and Supplemental

Art. 104 rep. by 1986 NI 24

Arbitration

105.—(1) ...^{F152}, any matter which is required under this Order to be determined by arbitration shall be determined by a single arbitrator agreed upon by the parties or, in default of such agreement, appointed by the Lord Chief Justice on the application of any of the parties.

Paras.(2)□(5) rep. by 1978 NI 26

(6) Subject to ^[F153] paragraph (1)],^[F154] Part I of the Arbitration Act 1996] shall, in relation to arbitrations under this Order, have effect subject to such modifications as may be prescribed.

Annotations:

Amendments (Textual)

F152 1978 NI 26

F153 1978 NI 26

F154 1996 c.23

Miscellaneous administrative matters

106. Regulations may—

- (a) provide for the determination by arbitration, in default of agreement, of any question arising as to whether any asset or liability has been transferred by virtue of section 27 of the Health Services Act (Northern Ireland) 1948 or section 6 of the Health Services (Amendment) Act (Northern Ireland) 1967 or as to the person to whom it has been transferred by virtue of those sections;
- (b) prescribe anything which is necessary or expedient for the purpose of giving due effect to the provisions of this Order.

Orders, regulations and directions

107.—(1) Orders made under Articles 16(1)^{F155}, 56(2B)] and 108, orders made under Article 76(1) to which paragraph 1(a) to (e) of Schedule 13 applies and regulations shall be subject to negative resolution.

(2) Regulations may provide that persons contravening the regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding an amount specified in the regulations.

(3) The amount which may be specified in regulations as mentioned in paragraph (2) shall not exceed^{F156} level 3 on the standard scale].

(4) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 shall apply to a direction given by the Ministry or given jointly by the Ministry and the Ministry of Home Affairs^{F157} under this Order as if the direction were a statutory instrument.

(5) All statutory instruments made under any transferred provision repealed by this Order, so far as they are in force immediately before the commencement of this Order, shall with the necessary modifications continue in force until they are revoked by any order or regulations under this Order and shall have the like effect, and the like proceeding may be had thereon and in respect thereof as if they had been made under this Order.

(6) Without prejudice to any other provision of this Order, any power conferred by this Order on the Ministry to make any regulations or orders having a financial implication shall, if the Ministry of Finance so directs, be exercisable only in conjunction with that Ministry.

Annotations:

Amendments (Textual)

F155 1991 NI 1

F156 1984 NI 3

F157 functions transf. by SRO (NI) 1973/504

Amendment and repeal of local Acts and charters

108. Where, immediately before the commencement of this Article, there was in force a local or personal Act or charter containing provisions inconsistent with any of the provisions of this Order or redundant in consequence of any of those provisions, the Ministry may by order modify the local or personal Act or charter so far as may be necessary for the purpose of bringing its provisions into conformity with the provisions of this Order or, as the case may be, for the purpose of removing redundant provisions.

Amendments, savings and repeals

Para. (1), with Schedule 16, effects amendments

(2) The saving, temporary and transitional provisions specified in Schedule 17 shall have effect for the purposes of this Order.

Para. (3), with Schedule 18, effects repeals

(4) References to any transferred provision repealed by this Article in any deed, instrument or other document giving effect to arrangements made under paragraph 2(2) of Schedule 11 to the Health Services Act (Northern Ireland) 1971 shall be construed as references to the corresponding provision of this Order.

SCHEDULES

SCHEDULE 1

Article 16(3).

THE HEALTH AND SOCIAL SERVICES BOARDS

PART I

THE CONSTITUTION OF THE HEALTH AND SOCIAL SERVICES BOARDS

1. A Health and Social Services Board shall be a body corporate with perpetual succession to which section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

2. A Health and Social Services Board shall, notwithstanding that it is exercising functions on behalf of the Ministry or the Ministry of Home Affairs^{F158}, be entitled to enforce any rights acquired and shall be liable in respect of any liabilities incurred (including liabilities in tort) in the exercise of those functions in all respects as if it were acting as a principal, and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health and Social Services Board in its own name.

Annotations:

Amendments (Textual)

F158 functions transf. by SRO (NI) 1973/504

[^{F159}3.—(1) A Health and Social Services Board shall consist of—

- (a) a chairman appointed by the Head of the Department;
- (b) a prescribed number of persons appointed by the Head of the Department;
- (c) the chief officer of the Board;
- (d) such other officers as may be prescribed; and
- (e) not more than a prescribed number of other officers of the Board appointed by the chairman and the members specified in heads (b) and (c).

(2) Except in so far as regulations otherwise provide, no person who is an officer of the Board may be appointed under sub-paragraph (1)(a) or (b).

(3) Subject to sub-paragraph (4), regulations may provide that all or any of the persons appointed under sub-paragraph (1)(b) must fulfil prescribed conditions or hold posts of a prescribed description.

(4) In the case of a prescribed Board, at least one of the persons appointed under sub-paragraph (1)(b) must hold a post in a university with a medical or dental school.]

Annotations:

Amendments (Textual)

F159 1991 NI 1

[^{F160}4.—(1) The term of office of members of a Health and Social Services Board appointed under paragraph 3(1)(a), (b) or (e) shall be four years or such other period as may be determined by the Head of the Department at the time the appointments are made.

(2) A member of a Health and Social Services Board specified in paragraph 3(1)(c), (d) or (e) shall—

- (a) if he ceases to hold the qualifying office, cease to be a member of the Board;
- (b) if he is suspended from the qualifying office, be suspended from membership of the Board for so long as he remains suspended from that office.

(3) In sub-paragraph (2) “the qualifying office” in relation to a member of a Health and Social Services Board means the office under the Board which he held at the time he became a member of the Board.]

Annotations:

Amendments (Textual)

F160 1991 NI 1

[^{F1615}5.—(1) A member of a Health and Social Services Board appointed under paragraph 3(1)(a) or (b)—

- (a) may resign his membership by serving notice on the Head of the Department;
- (b) may be removed from office by the Head of the Department.

(2) A member of a Health and Social Services Board appointed under paragraph 3(1)(e) may be removed from office by the chairman and members specified in paragraph 3(1)(b) and (c).

(3) Where any member of a Health and Social Services Board—

- (a) is absent from the meetings of the Board for more than six months consecutively, except for an approved reason;
- (b) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or
- (c) is convicted of an indictable offence,

the Board shall forthwith, by resolution, declare the office to be vacant and shall notify that fact in such manner as it thinks fit, and thereupon the office shall become vacant.

(4) In sub-paragraph (3)(a) “approved reason” means a reason approved—

- (a) in the case of members appointed under paragraph 3(1)(e), by the chairman and the members specified in paragraph 3(1)(b) and (c);
- (b) in the case of any other member, by the Department.

(5) Where the place of a member specified in paragraph 3(1)(a), (b) or (e) becomes vacant before the expiration of his term of office whether by death, resignation or otherwise, the vacancy shall be filled by appointment—

- (a) in the case of a member specified in paragraph 3(1)(a) or (b), by the Head of the Department;
- (b) in the case of a member specified in paragraph 3(1)(e), by the chairman and the members specified in paragraph 3(1)(b) and (c);

and any person so appointed shall hold office for the remainder of the term of office of the former member.]

Annotations:

Amendments (Textual)

F161 1991 NI 1

6. The proceedings of a Health and Social Services Board or of any committee thereof shall not be invalidated by any vacancy in the membership of the Board or committee or by any defect in the appointment of any of its members.

PART II

SUPPLEMENTARY PROVISIONS AS TO THE HEALTH AND SOCIAL SERVICES BOARDS

Acquisition, etc., of land

7. Subject to Part X and paragraph 2(d) of Schedule 9, so much of section 19 of the Interpretation Act (Northern Ireland) 1954 as relates to the acquisition of land shall not apply to a Health and Social Services Board and any power conferred by that section to acquire movable property shall be exercised on behalf of the Ministry.

Committees

Sub-para. (1) rep. by 1986 NI 24

(2) , a Health and Social Services Board may, subject to sub-paragraph (5), appoint one or more committees to which it may delegate such of its functions as it thinks fit.

(3) A committee appointed under this paragraph may include persons who are not members of the Health and Social Services Board.

(4) Every member of a committee appointed under this paragraph, who, at the time of his appointment, was a member of the Health and Social Services Board shall, if he ceases to be a member of the Board, also cease to be a member of the committee.

(5) The Ministry may, by regulations or directions, make provision with respect to the appointment, constitution or functions of committees appointed under this paragraph.

Sub-committees

9.—(1) A Health and Social Services Board, or a committee appointed by such a Board, may, subject to sub-paragraph (3), appoint a sub-committee to consider and report to the Board or, as the case may be, the committee, upon any matter within the competence of that Board or committee.

(2) A sub-committee appointed under sub-paragraph (1) may include persons who are not members of the Board or committee which appoints the sub-committee.

(3) The Ministry may, by regulations or directions, make provision with respect to the appointment, constitution or functions of sub-committees appointed under sub-paragraph (1).

Procedure

10. Each Health and Social Services Board shall make standing orders with regard to its procedure (including the fixing of a quorum) and that of its committees and sub-committees which shall be subject to the approval of the Ministry.

Disclosure of pecuniary, etc., interests and related provisions

11.—(1) Subject to sub-paragraph (2), sections 28 to 33 and 146 of the Local Government Act (Northern Ireland) 1972 and section 148 of that Act so far as it applies for the interpretation of those sections, shall apply to a Health and Social Services Board and to a committee and sub-committee thereof and to a member of such a Board, committee and sub-committee as if—

- (a) in those sections any reference to a council were a reference to a Board or to a committee or sub-committee thereof, any reference to a councillor were a reference to a member of a Board or of a committee or sub-committee thereof, any reference to the clerk of the council were a reference to the chief officer of the Health and Social Services Board and any reference to that Act were a reference to this Order;
- (b) in section 28(4) of that Act the words “or 46” were omitted and for the words from “by any local elector” onwards there were substituted the words “by any person.”.

(2) Notwithstanding anything in sub-paragraph (1), where an officer of a Health and Social Services Board is a member of the Board he may vote upon any matter which touches the interests of officers of the Board or such officers of any class (including a class to which he belongs), but shall not vote upon any matter touching only his individual interest.

Officers

12.—(1) The qualifications, remuneration and conditions of service of officers of a Health and Social Services Board shall be determined by the Ministry.

(2) Regulations may make provision with respect to—

- (a) the method of appointment of officers of Health and Social Services Boards;
- (b) the qualifications, remuneration and conditions of service of such officers of Health and Social Services Boards as may be prescribed;

and an officer such as is mentioned in head (b) shall not be employed otherwise than in accordance with the regulations.

[^{F162}(2A) Determinations or regulations under sub-paragraph (1) or (2) may provide for approvals or determinations to have effect from a date specified in them.

(2B) The date mentioned in sub-paragraph (2A) may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.

^{F163}(2C) Where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an order under section 32 of the Dentists Act 1984 (interim suspension); or
- (b) by a direction or an order of the Health Committee under that Act (health cases),

the suspension shall not terminate any contract of employment made between him and a Health and Social Services Board but a person whose registration is suspended under that Part of that Act shall not perform any duties under a contract made between him and a Health and Social Services Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.]

(3) The appointment and removal from office of such officers of Health and Social Services Boards as may be prescribed shall be subject to the approval of the Ministry.

Annotations:

Amendments (Textual)

F162 1986 NI 24

F163 prosp. subst. by SI 2005/2011

The seal Execution of contracts and instruments not under seal

[^{F164}**13.** The seal of a Health and Social Services Board shall be authenticated by the signatures of—

- (a) at least one member of the Board appointed under paragraph 3(1)(a) or (b); and
- (b) the chief officer of the Board.]

Annotations:

Amendments (Textual)

F164 1991 NI 1

14. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of a Health and Social Services Board by any person generally or specifically authorised by that Board to act for that purpose and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

[^{F165}**15.** Regulations may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Health and Social Services Board is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.]

Annotations:

Amendments (Textual)

F165 1991 NI 1

Schedule 2 rep. by 1986 NI 24

SCHEDULE 3

Article 26(2).

THE NORTHERN IRELAND CENTRAL SERVICES AGENCY FOR THE HEALTH AND SOCIAL SERVICES

PART I

THE CONSTITUTION OF THE AGENCY

1. The Agency shall be a body corporate with perpetual succession to which section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

2. The Agency shall, notwithstanding that it is exercising functions on behalf of the Ministry or any other body associated with health or personal social services, be entitled to enforce any rights acquired and shall be liable in respect of any liabilities incurred (including liabilities in tort) in the exercise of those functions in all respects as if it were acting as a principal, and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Agency in its own name.

3.—(1) Subject to sub-paragraph (2), the Agency shall consist of a chairman, vice-chairman and such number of other members as the Minister thinks fit.

(2) The chairman and vice-chairman of the Agency shall be appointed by the Minister and other members shall be so appointed after consultation with the Health and Social Services Boards and any other interests which appear to the Minister to be concerned.

4. The Ministry may, by regulations, make provision for—

- (a) the appointment, tenure, and vacation of office, of the chairman, vice-chairman and other members of the Agency;
- (b) enabling alternate members to attend in place of any member of the Agency who may be absent;

or if no such regulations are in force, may determine any of those matters.

5. The proceedings of the Agency or of any committee thereof shall not be invalidated by any vacancy in the membership of the Agency or committee or by any defect in the appointment of any of its members.

PART II

SUPPLEMENTARY PROVISIONS AS TO THE AGENCY

Acquisition, etc., of land

6. So much of section 19 of the Interpretation Act (Northern Ireland) 1954 as relates to the acquisition of land shall not apply to the Agency and any power conferred by that section to acquire movable property shall be exercised on behalf of the Ministry.

Committees

7.—(1) The Agency shall, subject to sub-paragraph (5), appoint such committees as the Ministry may determine.

(2) Without prejudice to sub-paragraph (1), the Agency may, subject to sub-paragraph (5), appoint one or more committees to which it may delegate such of its functions as it thinks fit.

(3) A committee appointed under this paragraph may include persons who are not members of the Agency.

(4) Every member of a committee appointed under this paragraph, who, at the time of his appointment, was a member of the Agency shall, if he ceases to be a member of the Agency, also cease to be a member of the committee.

(5) The Ministry may, by regulations or directions, make provision with respect to the appointment, constitution or functions of committees appointed under this paragraph.

Sub-committees

8.—(1) The Agency, or a committee appointed by the Agency, may, subject to sub-paragraph (3), appoint a sub-committee to consider and report to the Agency or, as the case may be, the committee, upon any matter within the competence of the Agency or that committee.

(2) A sub-committee appointed under sub-paragraph (1) may include persons who are not members of the Agency or committee which appoints the sub-committee.

(3) The Ministry may, by regulations or directions, make provision with respect to the appointment, constitution or functions of sub-committees appointed under sub-paragraph (1).

Procedure

9. The Agency shall make standing orders with regard to its procedure (including the fixing of a quorum) and that of its committees and sub-committees which shall be subject to the approval of the Ministry.

Disclosure of pecuniary, etc., interests and related provisions

10. Sections 28 to 33 and 146 of the Local Government Act (Northern Ireland) 1972 and section 148 of that Act so far as it applies for the interpretation of those sections, shall apply to the Agency and to a committee and sub-committee thereof and to a member of the Agency and of such committee and sub-committee as if—

- (a) in those sections any reference to a council were a reference to the Agency or to a committee or sub-committee thereof, any reference to a councillor were a reference to a member of the Agency or of a committee or sub-committee thereof, any reference to the clerk of the council were a reference to the chief officer of the Agency and any reference to that Act were a reference to this Order;
- (b) in section 28(4) of that Act the words “or 46” were omitted and for the words from “by any local elector” onwards there were substituted the words “by any person.”.

Officers

11.—(1) The qualifications, remuneration and conditions of service of officers of the Agency shall be determined by the Ministry.

(2) Regulations may make provision with respect to—

- (a) the method of appointment of officers of the Agency; and
- (b) the qualifications, remuneration and conditions of service of such officers of the Agency as may be prescribed;

and an officer such as is mentioned in head (b) shall not be employed otherwise than in accordance with the regulations.

(3) The appointment and removal from office of such officers of the Agency as may be prescribed shall be subject to the approval of the Ministry.

The seal

12. The seal of the Agency shall be authenticated by the signatures of at least one member of the Agency and of the person for the time being acting as chief officer of the Agency.

Execution of contracts and instruments not under seal

13. Any contract or instrument which, if entered into or executed by an individual, would not require to be^{F166} executed as a deed] may be entered into or executed on behalf of the Agency by any person generally or specifically authorised by the Agency to act for that purpose and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Health and Personal Social Services (Northern Ireland) Order 1972. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:**Amendments (Textual)**

F166 2005 NI 7

Schedule 4 rep. by 1991 NI 1

Schedule 5 rep. by 1992 NI 20

SCHEDULE 6

Articles 37, 38(1)(b).

REMOVAL TO SUITABLE PREMISES OF PERSONS IN NEED OF CARE AND ATTENTION

1. Where an officer, being a social worker, of^{F167} the responsible authority]
 - (a) has reason to believe that, in the interests of any such person as is mentioned in Article 37, or for preventing injury to the health of, or serious nuisance to, other persons, it is necessary to remove such person from the premises in which he is residing;
 - (b) consults with—
 - (i) the medical practitioner (if any) providing^{F168} primary medical services] for such person under Part VI; and
 - (ii) a medical officer of the^{F167} responsible authority designated by that authority] in that behalf; and
 - (c) after such consultation, obtains from such medical officer a certificate to the effect that such removal is necessary;

that officer shall certify accordingly in writing to the [^{F169}responsible authority and that authority^{F170} may thereupon, after serving on the nearest known relative (if any) in Northern Ireland of such person three clear days' notice of its intention to do so, apply to the court of summary jurisdiction having jurisdiction in the petty sessions district where the premises are situated for an order under paragraph 2.]

Annotations:**Amendments (Textual)**

F167 1994 NI 2

F168 2004 NI 2

F169 1994 NI 2

2.—(1) Subject to sub-paragraph (2), on any such application the court may, if satisfied on oral evidence of the allegations in the certificate, order the removal of the person to whom the application

relates, by such officer of the^{F171} responsible authority] as may be specified in the order, to a suitable hospital or other place in, or within convenient distance of, the area of that^{F171} authority], and his detention and maintenance therein.

(2) The court shall not order the removal of a person to any premises unless either the person managing the premises has been heard in the proceedings or three clear days' notice has been served on him of the intended application and of the time and place at which it is proposed to be made.

Annotations:

Amendments (Textual)

F171 1994 NI 2

3. An order under paragraph 2 may be made so as to authorise a person's detention for any period not exceeding three months, and the court may by order extend that period for such further period, not exceeding three months, as the court may determine.

4. An order under paragraph 2 may be varied by an order of the court so as to substitute for the place referred to in that paragraph such other suitable place in, or within convenient distance of, the area of the^{F172} responsible authority] as the court may determine, so however that paragraph 2(2) shall apply, with the necessary modifications, to any proceedings under this paragraph.

Annotations:

Amendments (Textual)

F172 1994 NI 2

5. At any time after the expiration of six weeks from the making of an order under paragraph 2 or 3, an application may be made to the court by or on behalf of the person in respect of whom the order was made, and, on any such application, the court may, if in the circumstances it appears expedient to do so, revoke or vary the order.

6. An application under this Schedule shall not be entertained by the court unless, three clear days at least before the making of the application, notice of the intended application, and of the time and place at which it is proposed to be made, has been served—

- (a) where the application is for an order under paragraph 2 or 3, on the person in respect of whom the application is made;
- (b) where the application is for the revocation of such an order, on the officer of the^{F173} responsible authority].

Annotations:

Amendments (Textual)

F173 1994 NI 2

7. A person in respect of whom an application is made under this Schedule, and any person on whom a notice has been served under paragraph 1, shall have the right to be heard against such application and to be represented by counsel or a solicitor.

8. Where the premises in which a person is maintained under this Schedule are premises which are neither hospital accommodation^{F174} vested in the Department or an HSS trust] nor premises

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where accommodation is provided by, or by arrangement with, the Ministry under Article 15 or 36, the cost of his maintenance shall be borne by the^{F174} responsible authority].

Annotations:

Amendments (Textual)

F174 1994 NI 2

9. Any expenditure incurred by the^{F175} responsible authority] under paragraph 8 shall be recoverable by the^{F175} authority] from the person maintained or from any person who, for the purposes of this Order, is liable to maintain that person; and any expenditure incurred by virtue of this Schedule in connection with the maintenance of a person in premises where accommodation is provided under Article 15 or 36 shall be recoverable in like manner as expenditure incurred in providing such accommodation.

Annotations:

Amendments (Textual)

F175 1994 NI 2

10. Any person who wilfully disobeys, or obstructs the execution of, an order under paragraph 2 or 3 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^{F176} level 1 on the standard scale].

Annotations:

Amendments (Textual)

F176 1984 NI 3

11. In the exercise of its functions under this Schedule^{F177} the responsible authority] shall act in accordance with regulations and directions.

Annotations:

Amendments (Textual)

F177 1994 NI 2

^{F178}12. In this Schedule—

- (a) “responsible authority” means—
 - (i) in relation to a person who resides in the operational area of an HSS trust by which functions under this Schedule are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994, that HSS trust;
 - (ii) in relation to any other person, the Health and Social Services Board for the area in which that person resides;
- (b) references to the area of an HSS trust are references to its operational area.]

Annotations:

Amendments (Textual)

F178 1994 NI 2

SCHEDULE 7

Article 48(3).

MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT
ACT (NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 48

1. References to the Ministry or to the council shall be construed as references to the Ministry within the meaning of this Order.
2. References to the said Schedule 6 shall be construed as references to that Schedule as modified by this Schedule.
3. Paragraph 1 shall be omitted.
4. In paragraph 2—
 - (a) for the words from the beginning to “directs,” there shall be substituted the words “ Where the Ministry proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so and such notice”;
 - (b) in sub-paragraph (c) for the words “as may be prescribed” there shall be substituted the words “ as the Ministry considers fit”.
5. In paragraph 3(1)(ii) for the word “refuse” there shall be substituted the words “ decide not”.
6. In paragraph 4 the words from “and may provide” to the end of the paragraph shall be omitted.
7. In paragraph 5—
 - (a) in sub-paragraph (1)(a) the words “in the prescribed form and manner” shall be omitted;
 - (b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;
 - (c) in sub-paragraph (1)(d) the words “in the prescribed form” shall be omitted;
 - (d) in sub-paragraph (2) for the words “as may be prescribed” there shall be substituted the words “ as the Ministry considers fit”.
8. In paragraph 6(2) for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” there shall be substituted the words “ Consolidated Fund” and for the words “out of the compensation fund” there shall be substituted the words “ made by the Ministry”.
9. In paragraph 11(3) the words “in the prescribed form” shall be omitted.
10. In paragraph 12—
 - (a) in sub-paragraph (1) the word “such” and the words “as may be prescribed” shall be omitted;
 - (b) in sub-paragraph (2) for the words from “clerk” to “directs” there shall be substituted the words “ Ministry as correct, and shall publish”.
11. In paragraph 14(1) the words “in the prescribed form” shall be omitted.
12. In paragraph 15(1) for the words “in the prescribed form” there shall be substituted the words “ in such form as may be approved by the Ministry”.

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13. Paragraph 19 shall be omitted.
14. In paragraph 20, sub-paragraph (2) shall be omitted.

Schedule 8 rep. by 2005 c. 12

SCHEDULE 9

Article 59.

PROVISION FOR MAKING LOANS TO GENERAL MEDICAL PRACTITIONERS

1. The Ministry, with the approval of the Ministry of Finance, may by order empower the Health and Social Services Boards to make loans to practitioners providing^{F179} primary medical services] for the purpose of enabling them—

- (a) to provide, or to acquire a share in, premises used or to be used, in whole or in part, for the provision of those services;
- (b) to alter, enlarge, improve or repair such premises;
- (c) to acquire any land required for the erection of, or in connection with the use of, such premises;
- (d) to acquire any equipment or furniture needed by them in the provision of those services;
- (e) to repay any loan raised by them for any such purpose.

Annotations:

Amendments (Textual)

F179 2004 NI 2

2. Without prejudice to the generality of paragraph 1, an order under this Schedule may make provision for—

- (a) authorising the making of schemes in accordance with which loans under the order shall be made;
- (b) the borrowing powers of the Health and Social Services Boards for the purpose of making loans under the order and the guaranteeing by the Ministry of Finance of the payment of interest on, and the repayment of the principal of, any loan raised by the Health and Social Services Boards for that purpose;
- (c) securing repayment of the interest on, and the principal of, any loans made under the order;
- (d) authorising the Health and Social Services Boards to hold and dispose of any land or other property conveyed to them as security for a loan so made;
- (e) the defrayal of expenses incurred in making loans under the order.

3. An order shall not be made under this Schedule unless and until a draft thereof has been laid before Parliament and approved by a resolution of each House of Parliament.

4. Where it is shown to the satisfaction of the Ministry that, taking one year with another, the revenue of any Health and Social Services Board from loans so made is less than the expenditure

properly chargeable to any revenue account of that Board in respect of loans so made, the Ministry may pay to that Board such sum not exceeding the amount of the deficiency as the Ministry thinks fit.

5. Where an order under this Schedule authorises the Ministry of Finance to guarantee the payment of interest on, and the repayment of the principal of, any loan proposed to be raised by the Health and Social Services Boards—

- (a) the principal of the loans which may be so guaranteed under the order shall not exceed in the aggregate^{F180} £6,000,000];
- (b) there shall be charged on and issued out of the Consolidated Fund any sums required by the Ministry of Finance to fulfil any guarantees given by it under the order;
- (c) the Ministry of Finance may borrow money for the purpose of providing for issues out of the Consolidated Fund under sub-paragraph (b);
- (d) the Health and Social Services Board shall make to the Ministry of Finance, at such times and in such manner as that Ministry may direct—
 - (i) payments of such amounts as that Ministry may direct in or towards repayment of any sums issued out of the Consolidated Fund under sub-paragraph (b); and
 - (ii) payments of interest on what is outstanding in respect of sums so issued, at such rates as that Ministry may direct.

Annotations:

Amendments (Textual)

F180 1989 NI 7

^{F181}SCHEDULE 10

PROHIBITION OF SALE OF MEDICAL PRACTICES

Annotations:

Amendments (Textual)

F181 2001 c. 3 (NI)

Sale of medical practices

1.—(1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—

- (a) provided^{F182} primary medical services] under arrangements made with a Health and Social Services Board under this Order; or
- (b) provided or performed personal medical services in accordance with Article 15B arrangements made with a Health and Social Services Board.^{F182} (prior to the coming into operation of Article 3 of the Primary Medical Services (Northern Ireland) Order 2004)]^{F182} or]

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[^{F182}(c) provided or performed primary medical services in accordance with Article 15B arrangements, arrangements under Article 56B(2)(b) or under a general medical services contract—

- (i) in prescribed circumstances, or
- (ii) if regulations so provide, in all circumstances;]

unless that person no longer provides or performs such services and has never carried on the practice in that Board's area.

(2) In this Schedule—

“goodwill” includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

“medical practice” includes any part of a medical practice.

Annotations:

Amendments (Textual)

F182 2004 NI 2

Prohibition, and certificate of Health and Social Services Board

2.—(1) Any person who sells or buys the goodwill of a medical practice which it is unlawful to sell by virtue of paragraph 1 is guilty of an offence and liable on conviction on indictment to a fine not exceeding—

- (a) such amount as will in the court's opinion secure that he derive no benefit from the offence; and
- (b) the further amount of £500;

or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of paragraph 1 may ask the Health and Social Services Board for the area in which the practice is situated for a certificate under this paragraph.

(3) The Health and Social Services Board shall consider any such application, and, if it is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, it shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to the Board.

(4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the Health and Social Services Board under sub-paragraph (3).

(5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.

(6) If it appears to the court that the applicant for any such certificate failed to disclose to the Health and Social Services Board all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.

(7) A prosecution for an offence under this paragraph shall only be instituted by or with the consent of the Director of Public Prosecutions, and the Health and Social Services Board shall, at the request of the Director, furnish him with a copy of any certificate issued by it under sub-

paragraph (3), and with copies of any documents produced to it in connection with the application for that certificate.

Certain transactions deemed sale of goodwill

3.—(1) For the purposes of paragraphs 1 and 2, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—

- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice; and
- (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.

(2) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.

(3) For the purposes of sub-paragraphs (1) and (2)—

- (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions); and
- (b) a person who procures the disposal of any premises is to be treated as having disposed of them.

(4) Where in pursuance of any partnership agreement—

- (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership;
- (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner’s share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership; or
- (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there shall be deemed for the purposes of paragraphs 1 and 2 to have been a sale of the goodwill of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of sub-paragraphs (1) and (2) to have been effected—

- (i) in a case to which head (a) or head (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given; or
- (ii) in a case to which head (c) applies, at the time when the agreement was made.

(5) Sub-paragraph (6) applies if a person (“the assistant”)—

- (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
- (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and

- (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.
- (6) For the purposes of paragraphs 1 and 2, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.
- (7) For the purposes of paragraphs 1 and 2, the goodwill of a medical practice shall be deemed to have been sold if—
- (a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
 - (i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or
 - (ii) to allow any act to be done, for that purpose; or
 - (b) a person—
 - (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
 - (ii) succeeds, or has previously succeeded, to the practice.
- (8) Sub-paragraph (7) does not apply—
- (a) if it is proved that no part of the consideration was given in respect of the goodwill; or
 - (b) to anything done—
 - (i) in relation to the acquisition of premises for the purposes of a medical practice;
 - (ii) in pursuance of a partnership agreement; or
 - (iii) in the performance of medical services by one person as an assistant to another.
- (9) In determining for the purposes of this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and apportion it between those transactions in such manner as it thinks just.
- (10) For the purposes of this Schedule—
- (a) consideration is deemed to be given to a person (“B”) if—
 - (i) it is given to another person but with B's knowledge and consent; and
 - (ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and
 - (b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.

Carried-over goodwill

4. The fact that a person's medical practice was previously carried on by another person who at any time provided^{F183} or performed services as specified in paragraph 1(1)] does not, by itself, make it unlawful under paragraph 1 for the goodwill of his practice to be sold.^{F184]}

Annotations:

Amendments (Textual)

F183 2004 NI 2

F184 2001 c. 3 (NI)

[^{F185}SCHEDULE 11

DISQUALIFICATION OF PERSONS PROVIDING PART VI SERVICES

Annotations:

Amendments (Textual)

F185 2001 c. 3 (NI)

PART I

THE TRIBUNAL

The Tribunal: general provisions

1.—(1) There shall continue to be a tribunal (“the Tribunal”) constituted in accordance with Part II for the purposes set out in this Part.

(2) If the Tribunal receives from a Health and Social Services Board representations that—

- (a) a person who is included in any list meets either of the conditions for disqualification; or
- (b) a person who has applied to be included in any list meets the second condition for disqualification,

the Tribunal shall inquire into the case.

(3) If the Tribunal receives such representations from any other person, it may inquire into the case.

(4) Representations under this paragraph shall be made—

- (a) in the prescribed manner; and
- (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.

(5) Sub-paragraphs (6) to (11) apply for the purposes of this Schedule.

(6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.

(7) The second condition for disqualification is that the person concerned—

- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
- (b) knew that he or (as the case may be) the other was not entitled to the benefit.

(8) A “list” means—

[^{F186}(a) [^{F186}a list of health care professionals of a prescribed description performing primary medical services;]

- (b) a list of medical practitioners undertaking to provide general ophthalmic services;
- (c) a list of dental practitioners undertaking to provide general dental services;
- (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services; or

(e) a list of persons undertaking to provide pharmaceutical services, prepared (in each case) under Part VI of this Order.

[^{F186}(8A) In sub-paragraph (8)(a), “health care professional” has the same meaning as in Article 15C.]

(9) “Health scheme” means—

- (a) any of the health services under Article 4(a) or any corresponding statutory provision extending to Scotland or England and Wales; and
- (b) any prescribed scheme,

and regulations may prescribe any scheme for the purposes of this sub-paragraph which appears to the Department to be a health or medical scheme paid for out of public funds.

(10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

(11) Cases in which representations are made that the first condition for disqualification is met are referred to as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to as fraud cases.

Annotations:

Amendments (Textual)

F186 2004 NI 2

The Tribunal: supplementary

2.—(1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

(2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

(3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if—

- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in paragraph 1(8) on the practitioner's behalf, meets that condition; and
- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within paragraph 1(7)(a) occurring in the course of the provision of those services on his behalf.

(4) The Tribunal is not required to inquire into a fraud case if it has previously inquired into representations in respect of the person concerned and the same acts or omissions.

(5) In a fraud case, regulations may make provision (including provision modifying the effect of Part VI of this Order and this Schedule) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

(6) For the purposes of this Schedule, in a fraud or efficiency case proceedings are finally concluded—

- (a) if the Tribunal determines not to disqualify, or conditionally disqualify, him, when it makes that determination;

- (b) if it determines to disqualify, or conditionally disqualify, him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
 - (c) if it determines to disqualify, or conditionally disqualify, him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under paragraph 1 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

Powers of the Tribunal

- 3.—(1) Sub-paragraph (2) applies where the Tribunal is of the opinion—
- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
 - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
- (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and
 - (b) may also make a general disqualification, that is disqualify him for inclusion in all lists within the same head of paragraph 1(8) as that list.
- (3) If the Tribunal makes a general disqualification it may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this Schedule as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this paragraph if it is of the opinion that it would be unjust to do so.
- (5) A disqualification under this paragraph shall have effect when proceedings in the case are finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health and Social Services Board, the Board shall not enter him in the list and (if he is already included in the list) shall remove him from the list.

Conditional disqualification

- 4.—(1) The functions of making disqualifications under paragraph 3 include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determines (on a review under paragraph 5) that the person subject to the inquiry has failed to comply with any conditions imposed by the Tribunal.
- (2) Conditions may be imposed by virtue of sub-paragraph (1) with a view to—
- (a) removing any prejudice to the efficiency of the services in question; or
 - (b) preventing any acts or omissions within paragraph 1(7)(a),
- (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Paragraph 3(4) applies to a conditional disqualification as it applies to a disqualification.
- (5) The Tribunal may by directions—
- (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under Part VI of this Order);
 - (b) confer functions on any Health and Social Services Board,

for the purpose of or in connection with the imposition of any conditions by virtue of this paragraph.

(6) References in any statutory provision to a disqualification by the Tribunal do not include a conditional disqualification.

Review etc. of disqualification

5.—(1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—

- (a) if the disqualified or conditionally disqualified person requests a review; or
- (b) in any other circumstances in which it considers it appropriate.

(2) On a review under sub-paragraph (1), the Tribunal may—

- (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
- (b) make a disqualification conditional;
- (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,

and, on a review of a fraud case, may make any further disqualification or conditional disqualification which it considers appropriate.

(3) If any Health and Social Services Board requests a review of a conditional disqualification on the ground that—

- (a) there has been a change in the circumstances by reference to which the conditions were imposed;
- (b) the person concerned has failed to comply with the conditions; or
- (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,

the Tribunal shall review the conditional disqualification.

(4) In the case of a person who is providing services in Scotland or England and Wales, the reference in sub-paragraph (3) to a Health and Social Services Board includes any corresponding authority under the provisions in force in Scotland or England and Wales corresponding to Part VI of this Order.

(5) On a review under sub-paragraph (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which it considers appropriate.

(6) If, on a review under this paragraph of a fraud case—

- (a) there is a general disqualification which the Tribunal does not remove or make conditional;
- (b) there is a general disqualification which is conditional and which the Tribunal makes unconditional; or
- (c) the Tribunal makes a general disqualification,

it may also make a declaration of unfitness.

(7) The Tribunal shall not under this paragraph—

- (a) in the case of a conditional disqualification, make it unconditional or vary the conditions;
- (b) make any further disqualification or conditional disqualification; or
- (c) make a declaration of unfitness,

if it is of the opinion that it would be unjust to do so.

- (8) A determination of the Tribunal under this paragraph shall have effect—
 - (a) if no appeal is brought against it, at the end of the period for bringing an appeal;
 - (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this paragraph.

Appeals

6. Any person aggrieved by any determination of the Tribunal under this Part may appeal to the Court of Appeal in accordance with rules of court; and the decision given on any such appeal shall be final and conclusive.

Disqualification provisions in Scotland or England and Wales

7.—(1) Where, under any provision in force in Scotland or England and Wales corresponding to the provisions of this Schedule, a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide any of the services mentioned in paragraph 1(8), then, in relation to the services in question, that person shall, so long as that disqualification is in force, be disqualified for inclusion in any list and (if also the subject of a declaration under those provisions corresponding to a declaration of unfitness) be treated as if a declaration of unfitness had been made in respect of him.

- (2) Where under the conditional disqualification provisions in Scotland or England and Wales—
 - (a) any conditions are imposed in relation to the provision by any person of any services mentioned in paragraph 1(8); or
 - (b) any conditions so imposed are varied,

the Department may, by a notice in writing given to each Health and Social Services Board and to the person in question, impose those conditions in relation to the provision by that person of those services under Part VI of this Order.

(3) A notice under sub-paragraph (2) may make such modifications of the conditions as the Department considers necessary for them to have the like effect in relation to Northern Ireland as they have in relation to Scotland or (as the case may be) England and Wales, but only if the Department has previously given the person concerned written notice of the proposed modifications and an opportunity (in accordance with such requirements, if any, as may be prescribed) to make representations about them.

(4) Conditions imposed by a notice under sub-paragraph (2) shall cease to have effect if the Department withdraws the notice by giving written notice to the person concerned.

(5) In this paragraph “the conditional disqualification provisions in Scotland or England and Wales” means any provision in force in Scotland or England and Wales corresponding to paragraphs 4 and (so far as relating to conditional disqualifications) paragraph 5.

Regulations

- 8.—(1) Regulations shall make provision—
 - (a) for inquiries under this Schedule to be held in accordance with such procedure as may be prescribed by or determined under the regulations and, in particular—
 - (i) for any person who is the subject of any such inquiry to have an opportunity of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before, and of being heard by, the Tribunal, and of calling witnesses and producing other evidence on his behalf; and
 - (ii) for the hearing by the Tribunal to be in public if the person who is the subject of the inquiry so requests;

- (b) for conferring on the Tribunal such powers as appear to the Department to be necessary for the purpose of holding inquiries under this Schedule, including power to require the attendance of witnesses and the production of documents, and to administer oaths; and
- (c) for the publication of the decisions of the Tribunal under this Schedule and of the imposition and removal of any disqualification or conditions imposed by virtue of paragraph 7.

(2) Regulations under sub-paragraph (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into both an efficiency case and a fraud case in respect of the same person, it may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of may if it thinks it appropriate adjourn the other case indefinitely.

Applications for interim suspension

9.—(1) A Health and Social Services Board which has made representations under paragraph 1 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under sub-paragraph (3) in relation to the person to whom the case relates.

(2) A Health and Social Services Board may, if it has requested a review of a conditional disqualification on the ground mentioned in paragraph 5(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under sub-paragraph (3) in relation to the person to whom the review relates.

(3) If, on an application under this paragraph, the Tribunal is satisfied that either of the conditions for doing so is satisfied, it shall direct that sub-paragraph (5) shall apply to the person concerned as respects services of the kind to which the case in question, or the case to which the review in question, relates.

(4) The conditions for giving such a direction are—

- (a) that it is necessary to do so in order to protect persons who are, or may be, provided with services under Part VI of this Order to which the case in question, or the case to which the review in question, relates;
- (b) in, or in the case of a review relating to, a fraud case, that unless it does so there is a significant risk that—
 - (i) an act or omission within paragraph 1(7)(a) will occur; or
 - (ii) the investigation of the case of the review will be prejudiced.

(5) A person to whom this sub-paragraph applies shall—

- (a) be deemed to have been removed from any relevant list in which his name is included;
- (b) be disqualified for inclusion in any relevant list in which his name is not included; and
- (c) be deemed to be a person in relation to whom there is in force a declaration of unfitness in relation to the provision of services of the relevant kind.

(6) A direction under sub-paragraph (3) shall cease to have effect on the Tribunal's disposing of the case or review in connection with which it is made.

(7) In the application of sub-paragraph (5) to any person—

- (a) “relevant list” means a list of persons undertaking to provide services of the kind to which the direction applying the sub-paragraph to him relates; and
- (b) “services of the relevant kind” means services of the kind to which that direction relates.

Suspension pending appeal

10.—(1) Where, on disposing of a case under paragraph 3, the Tribunal makes a general disqualification, it may, if it considers that either of the conditions mentioned in paragraph 9(4) is satisfied, direct that paragraph 9(5) shall apply or, if a direction has been given under paragraph 9(3), shall continue to apply to him as respects services of the kind to which the disqualification relates.

(2) A direction under sub-paragraph (1) shall cease to have effect—

- (a) where no appeal against the general disqualification is brought, at the end of the period for bringing an appeal; and
- (b) where an appeal against the disqualification is brought, when the appeal process has been exhausted.

(3) Where the power conferred by sub-paragraph (1) is exercisable by virtue of a disqualification which is not coupled with a declaration of unfitness, paragraph 9(5) shall have effect, in relation to the exercise of that power, with the omission of head (c).

Paragraphs 9 and 10: procedure

11.—(1) Before making a direction under paragraph 9(3) or 10(1) in relation to any person, the Tribunal shall give him an opportunity—

- (a) to appear before the Tribunal, either in person or by counsel or solicitor or such other representative as may be prescribed; and
- (b) to be heard and to call witnesses and produce other evidence.

(2) Regulations may—

- (a) make provision for, or for the determination of, procedure in relation to determining applications under paragraph 9 or the exercise of the power conferred by paragraph 10(1); and
- (b) provide for the functions of the Tribunal under paragraph 9 or 10 to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

Suspension provisions in Scotland or England and Wales

12.—(1) This paragraph applies where, under any provisions in force in Scotland or England and Wales corresponding to paragraph 9 or 10, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of Part VI of this Order of persons undertaking to provide services of one or more of the kinds specified in paragraph 1(8), other than those in which his name is included.

(2) The practitioner shall, while he is so disqualified—

- (a) be disqualified for inclusion in any list prepared under Part VI of this Order of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included; and
- (b) be deemed to have been removed from any relevant list in which his name is included.

Payments in consequence of suspension

13.—(1) Regulations may provide for the making to persons to whom paragraph 9(5) or 12(2) applies of payments in consequence of the application of that provision.

(2) Regulations under sub-paragraph (1) may provide for the determination by the Department in a prescribed manner of anything for which provision may be made by regulations under that sub-paragraph.

Removal of persons from list

14. Where any of the services mentioned in paragraph 1(8)(a) to (e) is administered pursuant to arrangements made by any Health and Social Services Board, and that Board is satisfied that any person whose name is on the list of persons undertaking to provide those services has never provided or has ceased to provide those services, it may remove his name from that list.

PART II

CONSTITUTION OF THE TRIBUNAL

Membership

15. The Tribunal shall consist of—

- (a) a chairman appointed by the Lord Chief Justice;
- (b) such number of deputy chairmen as the Lord Chief Justice may appoint;
- (c) such number of persons as the Department may appoint for the purposes of this sub-paragraph;
- (d) such number of medical practitioners as the Department may appoint for the purposes of this sub-paragraph;
- (e) such number of medical practitioners having the qualifications prescribed under Article 62 as the Department may appoint for the purposes of this sub-paragraph;
- (f) such number of dental practitioners as the Department may appoint for the purposes of this sub-paragraph;
- (g) such number of ophthalmic opticians as the Department may appoint for the purposes of this sub-paragraph; and
- (h) such number of pharmacists as the Department may appoint for the purposes of this sub-paragraph.

Chairman and deputy chairman

16. A person appointed as the chairman or a deputy chairman shall be either a barrister-at-law practising in Northern Ireland or a practising solicitor of the Supreme Court of not less than ten years' standing.

Other members of the Tribunal

17.—(1) Any appointment for the purposes of paragraph 15(c) shall be made after consultation with Health and Social Services Boards.

(2) Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 15 shall be made after consultation with such organisations as the Department may recognise as representative of the profession or calling concerned.

Functions of the Tribunal

18.—(1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman;
- (b) a person appointed under paragraph 15(c); and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 15 as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) as it has effect in relation to the functions mentioned below, the reference to the person concerned is—

- (a) in the case of functions under paragraphs 1 to 4, to the person to whom the representations in question relate;
- (b) in the case of functions under paragraph 5, to the person whose disqualification, conditional disqualification or declaration of unfitness is under consideration;
- (c) in the case of functions under paragraph 9, to the person to whom the application in question relates; and
- (d) in the case of functions under paragraph 10, to the person in relation to whom paragraph 9(5) may be made to apply or continue to apply.

(3) In sub-paragraph (1)(c) as it has effect in relation to functions of the Tribunal conferred by or under any statutory provision relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.

(4) In the case of functions under paragraph 9 or 10, sub-paragraph (1) is subject to paragraph 11(2)(b).

Regulations

19. Regulations may provide for the appointment, tenure of office and vacation of office of members of the Tribunal.^{F187]}

Annotations:

Amendments (Textual)

F187 2001 c. 3 (NI)

SCHEDULE 12

Article 66.

FORMER DISPENSARY PROPERTY, ETC.

1. Where a medical practitioner was in occupation of any dispensary residence immediately before the 5th July 1948 and exercised his entitlement under the proviso to section 19(1)(a) of the Health Services Act (Northern Ireland) 1948 to continue to occupy such residence subject to such conditions as were determined pursuant to that proviso, and was, by virtue of that entitlement, in occupation of such residence immediately before the ^{F188} 1st October 1973], he shall be entitled to continue in occupation of such residence so long as he continues to comply with those conditions.

Annotations:

Amendments (Textual)

F188 1972 NI 21

2. Notwithstanding anything in any transferred provision, or in any conveyance, trust deed or other instrument relating to that property, the Ministry may, subject to such conditions as it may determine, make available any property to which this Schedule applies (other than property which any person is entitled, pursuant to paragraph 1, to occupy) to any of the following persons—

- (a) medical practitioners, dental practitioners or pharmacists providing services under Part VI;

- (b) the Health and Social Services Boards for the purposes of any of their functions;
- (c) voluntary organisations providing services similar or related to those provided by the Ministry under this Order.

3. Where the Ministry is satisfied that any property to which this Schedule applies (other than property which any person is entitled, pursuant to paragraph 1, to occupy) is no longer required to be made available to the persons mentioned in paragraph 2, the Ministry may, notwithstanding anything in any transferred provision, or in any conveyance, trust deed or other instrument relating to that property, but subject to paragraphs 4 and 5 and to such conditions as it may determine, dispose of that property.

4. The Ministry shall, before disposing of any such property, notify the district council for the district within which the property is situated of its intention to do so.

5. If the district council which has been notified pursuant to paragraph 4, by resolution duly passed and communicated to the Ministry within three months of the council being so notified, requires the Ministry to do so, the Ministry shall by order transfer to that council all interests, rights or liabilities in, or relating to, that property to which the Ministry is entitled or subject immediately before the making of the order.

6. A district council to which the interests, rights or liabilities in any property are transferred under paragraph 5 may thereafter use that property for any of its functions or may dispose of that property.

7. Where, under paragraph 3 or 6, any property is disposed of by the Ministry or a district council, any proceeds of such disposal shall be paid to or, as the case may be, retained by the district council in whose district the property is situated.

8. Any district council by which any money is received under paragraph 7 in pursuance of a disposal shall apply that money towards the relief of rates.

SCHEDULE 13

Article 76.

INCIDENTAL, CONSEQUENTIAL, TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

1. An order under Article 76(1) may include provision—
 - (a) for the manner in which it is to be determined whether any assets or liabilities were held, acquired or incurred wholly or mainly for health or welfare purposes as mentioned in Article 75(1)(d)(ii);
 - (b) for the transfer of property to the Ministry where that property has undergone a change of use between 9th March 1972 and [^{F189} 1st October 1973], otherwise than in the ordinary course of business;
 - (c) for exempting, either temporarily or otherwise, from the provisions of Article 75 any property, other assets or liabilities, for enabling the Ministry to use any property so exempted or for enabling a body assuming functions of a local authority to continue to use, on such terms and conditions as may be agreed, any property transferred under Article 75;
 - (d) for the determination of any question or disputes arising under Article 75 or under an order made under Article 76;
 - (e) for such of the assets (other than property) and liabilities specified in the order to be enforceable, notwithstanding Article 75, by or against such Health and Social Services Board as may be specified, [^{F190} or the Agency];

- (f) for temporary modifications of this Order or for modifying or repealing any other transferred provision passed or made before [1st October 1973] (not including such a provision contained in this Order);
- (g) in connection with the dissolution of the bodies mentioned in Article 74 and the winding-up of their affairs, including provision for securing that anything done by or to such a body should have effect as if done by or to a body established under this Order;
- (h) for the carrying on and completion by or on behalf of the bodies mentioned in Article 74 of anything (including any legal or parliamentary proceeding) commenced by or on behalf of those bodies before [1st October 1973];
- (i) for construing, so far as may be necessary for the purposes of Article 74 or in consequence of an order made under Article 76(1), references in any transferred provision or in any judgement, decree, order or warrant of any court, or in any award, deed, contract or other document to any of the bodies mentioned in Article 74 as references to any other body;
- (j) for the application, defrayal, apportionment or adjustment of assets, liabilities, income or costs, for the inclusion or exclusion for purposes of such application, defrayal, apportionment or adjustment of any item which the Ministry may think proper to include or exclude, and for the continuance of, or of functions of, any of the bodies mentioned in Article 74 and the continuance in office of any member or officer of that body, as if the body had not been dissolved, for purposes of such application, defrayal, apportionment or adjustment or for purposes of the making up and audit of accounts and any proceedings in connection therewith or consequent thereupon;
- (k) for dealing with any applications, complaints or representations made to or by any body mentioned in Article 74 which are pending on [1st October 1973];
- (l) for the transfer of persons from lists of the Northern Ireland General Health Services Board to lists of Health and Social Services Boards or the removal of persons from such lists in pursuance of a direction made before [1st October 1973] by the Tribunal within the meaning of the Health Services Act (Northern Ireland) 1971 .

Annotations:

Amendments (Textual)

F189 1972 NI 21

F190 1991 NI 1

2. Where an order makes provision as mentioned in paragraph 1(*f*) the order shall be subject to affirmative resolution.

SCHEDULE 14

Articles 79(2), 83(2).

ENDOWMENTS OF CERTAIN HOSPITALS

1. Any endowment to which this Schedule applies shall, notwithstanding anything contained in any enactment or rule of law, be applied and used by the Health and Social Services Board—

- (a) firstly, in the discharge, to the extent to which the endowment could, immediately before 5th July 1948, have been lawfully applied and used for that purpose, of so much of the liabilities transferred to the management committee under section 25(3), (4) and (7) of the Health Services Act (Northern Ireland) 1948 as may be prescribed;

- (b) secondly, subject to paragraph 2, for such the purposes to which it could, immediately before 5th July 1948, have been lawfully applied or used as the Health and Social Services Board may think proper.

2. Where the Health and Social Services Board is satisfied that it has become impracticable or unnecessary to apply and use the endowment in accordance with paragraph 1(b), that Board may, notwithstanding anything contained in the trusts upon which the endowment is held, apply and use the capital or income of the whole or any part of the endowment for such of the purposes connected with the hospital as it may think proper.

SCHEDULE 15

Articles 42(2), 98(2).

CHARGES IN RESPECT OF CERTAIN SERVICES, AND OTHER RELATED MATTERS

1. Regulations made with the approval of the Ministry of Finance may provide—
- (a) for the making and, subject to the provisions of paragraphs 3 and 4, the recovery, in such manner as may be prescribed, of—
- [^{F191}(i) such charges as may be prescribed in respect of such services (other than services provided as part of the general dental services) provided under this Order[^{F192} or the 1991 Order] as may be prescribed;
- (ia) a charge of an amount calculated in accordance with paragraph 1A in respect of any services provided as part of the general dental services, not being—
- (a) the repair of appliances other than prescribed appliances; or
- (b) the arrest of bleeding;
- (iaa) charges of amounts calculated in accordance with paragraph 1A in respect of the supply under this Order of dentures and other dental appliances of prescribed descriptions;]
- (ii) charges, other than charges under Article 61(2)(d) in respect of the extra expense involved in the supply, at the request of the person supplied, of any appliance or vehicle which is of a more expensive type than that which would normally be supplied, or the replacement or repair of any such appliance, or, as the case may require, the replacement, repair or maintenance of any such vehicle; or
- (iii) charges, other than charges under Article 61(2)(d) in respect of the replacement of any appliance or vehicle supplied, the repair of any appliance supplied or the repair or maintenance of any vehicle supplied, if it is determined in the prescribed manner that the replacement, repair or maintenance, as the case may be, is necessitated by an act or omission of the person supplied or (if it occurred when he was under sixteen years of age) of his or of the person having charge of him when it occurred;
- (b) for the remission or repayment of[^{F193} such charges in respect of persons of such descriptions] as may be prescribed;
- (c) for the grant, on payment of such sums as may be prescribed, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed.

Annotations:

Amendments (Textual)

F191 1988 NI 24

F192 1991 NI 1

F193 1988 NI 2

[^{F194}**1A.**—(1) Subject to the following provisions of this paragraph, regulations made with the approval of the Department of Finance and Personnel may make such provision as to the amount of any charge—

(a) authorised by paragraph 1(a)(ia) for the provision of services; or

(b) authorised by paragraph 1(a)(iaa) for the supply of dentures or other dental appliances, as appears to the Department to be appropriate.

(2) Without prejudice to the generality of sub-paragraph (1), regulations may provide that any charge which is so authorised in respect of appliances or services supplied or provided under Part VI—

(a) shall be of an amount equal—

(i) to the practitioner's remuneration in respect of the supply or provision; or

(ii) to any part of that remuneration; or

(b) shall be otherwise calculated by reference to that remuneration.

(3) Without prejudice to the generality of sub-paragraph (1), regulations may provide that any charge which is authorised in respect of appliances supplied otherwise than under Part VI—

(a) shall be of an amount equal—

(i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or

(ii) to any part of such remuneration; or

(b) shall be otherwise calculated by reference to such remuneration.

(4) The charge shall not exceed the amount which the Department considers to be the cost to health services of the supply or provision.

(5) In this paragraph “cost to health services” does not include—

(a) any fee in respect of a visit by a practitioner to a patient;

(b) any fee in respect of the exceptional attendance by a practitioner at his surgery in order to provide emergency treatment; or

(c) any fee or part of a fee payable by a patient in pursuance of regulations under Article 61(2) (d) or (3).]

Annotations:

Amendments (Textual)

F194 1988 NI 24

Annotations:**Amendments (Textual)**

F195 prosp. inserted by 1997 NI 7

[^{F196}**1B.**—(1) Descriptions of persons may be prescribed for the purposes of paragraph 1(b) by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the following criteria—

- (a) their age;
- (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
- (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
- (d) their receipt of benefit in money or in kind under any transferred provision or their entitlement to receive any such benefit;
- (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
- (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(2) Regulations under this paragraph may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, may direct that they shall be calculated—

- (a) by a method set out in the regulations; or
- (b) by a method described by reference to a method of calculating or estimating income or capital specified in a transferred provision other than this paragraph or by reference to such a method but subject to prescribed modifications; or
- (c) by reference to an amount applicable for the purposes of a payment under a transferred provision; or
- (d) by reference to the person's being or having been entitled to payment under a transferred provision.

(3) Regulations under this paragraph which refer to a transferred provision may direct that the reference is to be construed as a reference to that provision—

- (a) as it has effect at the time when the regulations are made; or
- (b) both as it has effect at that time and as amended subsequently.]

Annotations:**Amendments (Textual)**

F196 1988 NI 2

2. Regulations made under paragraph 1 may provide that sums which would otherwise be payable by the Health and Social Services Boards to persons by whom any services are provided are to be reduced by the amount of the charges prescribed in respect of those services.

[^{F197}**2A.**—(1) The Department shall by regulations provide for payments to be made by the Department or by a Health and Social Services Board or the Agency to meet, or to contribute towards,

the cost incurred (whether by way of charge under this Order or otherwise) for the supply of optical appliances for which a prescription has been given in consequence of a testing of sight under this Order—

- (a) for a child;
- (b) for a person whose resources fall to be treated under the regulations as being less than his requirements; or
- (c) for a person of such other description as may be prescribed

[^{F198}or for which a prescription has been given for a person such as is mentioned in head (a), (b) or (c) in consequence of a testing of sight (not being a testing of sight under this Order) which took place in prescribed circumstances].

(2) In sub-paragraph (1), “child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education.

(3) In sub-paragraph (2), “qualifying full-time education” means full-time instruction—

- (a) at an educational establishment recognised by the Department as being, or as comparable to, a school, college or university; or
- (b) by other means accepted as comparable by the Department;

and for the purposes of this paragraph regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

[^{F198}(4) The Department may by regulations—

- (a) provide for the Department or a Health and Social Services Board or the Agency to contribute to the cost of a testing of sight which the Department, the Board or the Agency accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
- (b) provide for payments to be made by the Department or a Health and Social Services Board or the Agency to meet, or to contribute towards, any costs accepted by the Department, the Board or the Agency as having been incurred (whether by way of charge under this Order or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of sight of a person of a prescribed description; and
- (c) direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this head, give any such direction as to how they are to be calculated as may be given by regulations under paragraph 1B(2).

(4A) Descriptions of person may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in paragraph 1B(1).

(4B) Sub-paragraph (3) of paragraph 1B shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that paragraph.]]

Annotations:

Amendments (Textual)

F197 1984 NI 8

F198 1988 NI 24

3. Subject to paragraph 4, any charges under this Order shall, without prejudice to any other method of recovery, be a debt recoverable summarily.

4. Any person entitled to recover charges under this Order may, by agreement with the governing body of any association or fund established for the purpose of providing benefits to members or other beneficiaries thereof, accept from the association or fund, in respect of any charges payable under this Order by or in respect of any member or beneficiary of the association or fund, payment of such sums as may be provided by the agreement in lieu of recovering the whole or any part of such charges from, or from the estate of, such member or beneficiary or from any person liable therefor.

[^{F199}5.—(1) Where goods or services are provided under this Order and either—

- (a) any charge payable by any person under this Order in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
- (b) any payment under this Order is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in sub-paragraph (2) is recoverable summarily as a debt from the person in question by the responsible authority.

(2) That amount—

- (a) in a case within sub-paragraph (1)(a), is the amount of the charge or (where it has been reduced) reduction;
- (b) in a case within sub-paragraph (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under paragraph 3 or this paragraph to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

(4) For the purposes of this paragraph, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this paragraph and paragraph 6, “responsible authority” means—

- (a) in relation to the recovery of any charge under paragraph 3 in respect of the provision of goods or services under this Order, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this paragraph of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;
- (c) in a case within sub-paragraph (1)(b), the person who made the payment.

(6) But the Department may by directions provide for—

- (a) the functions of any responsible authority of recovering any charges under this Order in respect of the provision of goods or services under this Order;
- (b) the functions of any responsible authority under this paragraph and paragraph 6,

to be exercised on behalf of the authority by another health services body.]

Annotations:

Amendments (Textual)

F199 2001 c. 3 (NI)

6.—(1) Regulations may provide that, where a person fails to pay—

- (a) any amount recoverable from him under paragraph 3 in respect of the provision of goods or services under this Order; or
- (b) any amount recoverable from him under paragraph 5,

a notice (referred to in this paragraph as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this paragraph as a penalty charge) of an amount determined in accordance with the regulations.

(2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

- (a) £100;
- (b) the amount referred to in sub-paragraph (1)(a) or (b) multiplied by 5.

(3) The Department may by order provide for sub-paragraph (2) to have effect as if, for the sum specified in head (a) or the multiplier specified in head (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.

(4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(5) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(6) Any sum payable under the regulations (including the amount referred to in sub-paragraph (1) (a) or (b)) may be recovered by the responsible authority summarily as a debt.

(7) But a person is not liable by virtue of a penalty notice—

- (a) to pay at any time so much of any amount referred to in sub-paragraph (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) No order shall be made under sub-paragraph (3) unless a draft has been laid before, and approved by resolution of the Assembly.

7.—(1) A person is guilty of an offence if he does any act mentioned in paragraph (2) with a view to securing for himself or another—

- (a) the evasion of the whole or part of any charge under this Order in respect of the provision of goods or services under this Order;
- (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment;
- (c) a payment under this Order (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in sub-paragraph (1) are—

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- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation; or
 - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this paragraph before a magistrates' court if he is authorised to do so by the Department.
- (5) Proceedings for an offence under this paragraph may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge;
 - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of sub-paragraph (5), a certificate purporting to be signed by or on behalf of the Department as to the date on which such evidence as is mentioned in head (a) of that sub-paragraph came to its knowledge is conclusive evidence of that date.
- (7) Where, in respect of any charge or payment under this Order—
- (a) a person is convicted of an offence under this paragraph; or
 - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under paragraph 6,
- he shall not, in a case within head (a), be liable to pay any such penalty charge or further sum by way of penalty or, in a case within head (b), be convicted of such an offence.
- (8) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.^{F200}

Annotations:

Amendments (Textual)

F200 2001 c. 3 (NI)

9. Without prejudice to any other provision of this Schedule, it shall be lawful for the Ministry^{F201} or an HSS trust] to require any person, for whom the Ministry^{F201} or the HSS trust] is providing services under this Order^{F201} or the 1991 Order] as an in-patient in hospital and who is absent during the day from the hospital where he is a patient for the purpose of engaging in employment for which he is remunerated, to pay such part of the cost of his maintenance in the hospital, and any costs incidental thereto, as may seem to the Ministry^{F201} or the HSS trust] to be reasonable having regard to the amount of the remuneration, and the provisions of this Schedule with respect to the recovery of charges shall apply to the recovery of any payment so required.

Annotations:

Amendments (Textual)

F201 1991 NI 1

10. Nothing in Article 98(1) shall operate to restrict the making of provision under this Schedule for the making and recovery of charges or payments in respect of any accommodation or services provided under this Order^{F202} or the 1991 Order].

Annotations:

Amendments (Textual)

F202 1991 NI 1

Schedule 16—Amendments

SCHEDULE 17

Article 109(2).

SAVING, TEMPORARY AND TRANSITIONAL PROVISIONS

Exempted hospitals

1.—(1) The repeal by this Order of paragraph 2(1) of Schedule 11 to the Health Services Act (Northern Ireland) 1971 shall not, except to such extent as may be provided for under subparagraph (2) of this paragraph, affect the status, as an exempted hospital, of any hospital in respect of which an order was made under section 23(8) of the Health Services Act (Northern Ireland) 1948 .

(2) Notwithstanding the repeal by this Order of paragraph 2(2) of Schedule 11 to that Act of 1971, arrangements may be made with the governing body of the hospital to which an order under section 23(8) of that Act of 1948 related for the hospital to be treated as a hospital for the purposes of all or any of the provisions of this Order.

Recovery of certain loans

2. The repeal by this Order of paragraph 2 of Schedule 11 to the Health Services Act (Northern Ireland) 1971 shall not affect the liability of any person to repay any amount due, or which may become due, under a loan made under section 6 of the Health Services Act (Northern Ireland) 1958 , or affect the terms and conditions of a loan so made.

Saving for allowances, pensions, gratuities and compensation

3. The repeal of any enactment by this Order or by any enactment repealed by this Order shall not affect any allowances, pension or gratuity granted under, or any right to compensation accrued or accruing by virtue of, any such enactment before the repeal of that enactment became effective.

Special provisions as to certain property

4. The Belfast City Council may exercise the power conferred on the Lord Mayor, Aldermen and Citizens of the City of Belfast by section 24(1) of and Schedule 3 to, the Health Services Act (Northern Ireland) 1948 and may do so notwithstanding the repeal of section 75 of the Health Services Act (Northern Ireland) 1971.

Temporary provision as to compensation

5.—(1) Where—

- (a) in accordance with any enactment mentioned in sub-paragraph (4), compensation has been awarded to any officer in respect of his removal from or relinquishment of office;
- (b) that officer subsequently becomes entitled (whether by virtue of any enactment or otherwise) to a superannuation allowance in respect of any office which he has accepted after the date of such removal or relinquishment; and
- (c) in the calculation of the amount of such allowance, account has been taken of any period of service in respect of which such compensation is payable;

then, except as provided in sub-paragraph (3), such compensation—

- (i) shall cease to be payable if it does not exceed such part of the superannuation allowance as is attributable solely to that period of service;
 - (ii) shall, if it exceeds such part so attributable, be reduced by an amount equal to that part.
- (2) If a person receiving compensation under any enactment mentioned in sub-paragraph (4)—
- (a) obtains any office under any local or public body; or
 - (b) receives, by virtue of this Order or of anything done in pursuance of this Order, any increase in the remuneration of the office held by him at the date at which the compensation was assessed;

then, except as provided in sub-paragraph (3), he shall not, so long as he holds that office or receives that increased remuneration, be entitled to receive, by way of compensation in respect of the office for which compensation is awarded, any greater sum than would make up the amount (if any) by which the remuneration which he is receiving falls short of the remuneration of the office in respect of which compensation was awarded.

(3) The Ministry may, on the application of the person concerned or of the body by which the compensation is payable, direct that the operation of sub-paragraph (1) or, as the case may be, sub-paragraph (2), in relation to that person, shall be modified so far as is, in the opinion of the Ministry, necessary in order equitably to meet the circumstances of the case.

(4) The enactments referred to in sub-paragraphs (1)(a) and (2) are—

- (a) Schedule 3 to the Public Health (Tuberculosis) Act (Northern Ireland) 1946 , both as originally enacted and as applied by section 2 of the Health Services Act (Northern Ireland) 1958 ; and
- (b) Schedule 6 to the Health Services Act (Northern Ireland) 1948 .

(5) If a person receiving compensation under Schedule 4 to the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946

- (a) obtains any office under the Crown or under any local or other public authority; or
- (b) receives, by virtue of this Order or of anything done in pursuance of or in consequence of this Order, any increase of the emoluments of that office held by him;

then he shall not, while receiving the emoluments of that office, receive any greater amount of compensation (if any) than with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds that office.

(6) In this paragraph—

- (a) in sub-paragraph (2)(a), “local or public body” includes any authority or body specified in paragraph 1 of Schedule 1 to the^{F203} Financial Provisions (Northern Ireland) Order 1983 as an authority or body to whom government loans may be made];
- (b) in sub-paragraph (5), “local authority” and “emoluments” have the same meanings as in section 29 of and paragraph 17 of Schedule 4 to, the Public Health and Local Government

(Administrative Provisions) Act (Northern Ireland) 1946 and “local authority” also includes a district council or a joint committee of district councils.

Annotations:

Amendments (Textual)

F203 1983 NI 1

Para. 6 rep. by 1978 NI 15

Saving for powers of Ministry of Development^{F204} to dispose of former workhouse property

Annotations:

Amendments (Textual)

F204 SRO (NI) 1973/504; 1976 NI 16

7.—(1) The repeal of paragraph 1 of Schedule 3 to the Welfare Services Act (Northern Ireland) 1971 shall not affect any power of the Ministry of Development^{F205} to dispose of, in accordance with the provisions of section 3 of the Welfare Services Act (Northern Ireland) 1949 , any former workhouse property still held by that Ministry at the commencement of this Order.

(2) In this paragraph, “former workhouse property” means any land (not being property which was subject to the provisions of section 23(2) or (3A) of the Health Services Act (Northern Ireland) 1948) which was, immediately before the 20th January 1949, held by the Ministry of Health and Local Government under any of the provisions of the Poor Relief Acts (Northern Ireland) 1838 to 1937.

Annotations:

Amendments (Textual)

F205 SRO (NI) 1973/504; 1976 NI 16

Care of patients under Part III of Mental Health Act

8. Where immediately before [^{F206} 1st October, 1973] a hospital order or a guardianship order made under Part III of the Mental Health Act is in force by virtue of which a person is committed to the care of the Northern Ireland Hospitals Authority or the guardianship of a management committee the order shall have effect on and after [1st October, 1973] as if it committed him to the care of the Ministry or, as the case may be, the guardianship of a Health and Social Services Board.

Annotations:

Amendments (Textual)

F206 1972 NI 21

Para. 9. rep. by 1995 NI 2

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Health and Personal Social Services (Northern Ireland) Order 1972. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Saving for sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954

10. Nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

Schedule 18—Repeals

Changes to legislation:

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Changes and effects yet to be applied to the whole Order, associated Parts and Chapters:

- [S.R. 2008/396](#) commences (2008 c. 8 (N.I.))
- [S.R. 2009/114](#) commences (2009 c. 1 (N.I.))
- Order added by [2008 c. 2 \(N.I.\)](#)
- Order added by [2009 c. 1 \(N.I.\)](#)
- Order applied (with modifications) by [S.R. 2007/14](#)
- Order inserted by [2008 c. 2 \(N.I.\)](#)
- Order inserted by [2009 c. 1 \(N.I.\)](#)
- Order omitted by [2008 c. 2 \(N.I.\)](#)
- Order repealed by [2008 c. 2 \(N.I.\)](#)
- Order repealed by [2009 c. 1 \(N.I.\)](#)
- Order substituted by [2008 c. 2 \(N.I.\)](#)
- Order substituted by [2009 c. 1 \(N.I.\)](#)
- Order substituted for art. 61 by [2008 c. 2 \(N.I.\)](#)
- Order substituted for art. 91(6)(a) by [2009 c. 1 \(N.I.\)](#)
- Order substituted for art. 92B(3)(a)(b) by [2009 c. 1 \(N.I.\)](#)
- Order text amended by [2008 c. 2 \(N.I.\)](#)
- Order text amended by [2008 c. 8 \(N.I.\)](#)
- Order text amended by [2009 c. 1 \(N.I.\)](#)
- Order transfer of functions by [S.R. 2011/44](#)