

SCHEDULES

SCHEDULE 5

Article 34.

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS COMING INTO OPERATION ON 1ST APRIL 1991

The Parliamentary Commissioner Act (Northern Ireland) 1969 (c. 10)

In Schedule 2 in paragraph 5 (matters not subject to investigation) for the words from “the Northern Ireland Central Services Agency” to the end there shall be substituted “or the Northern Ireland Central Services Agency for the Health and Social Services”.

The Nursing Homes and Nursing Agencies Act(Northern Ireland) 1971 (c. 32)

In section 5(5) (notice of appeal) the word “administrative” shall cease to have effect.

The Health and Personal Social Services(Northern Ireland) Order 1972 (NI 14)

In Article 2(2) (interpretation)—

- (a) after the words “In this Order” there shall be inserted “and the 1991 Order”;
- (b) after the definition of “order” there shall be inserted—

““the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991;”.

In Article 53(1) (default powers) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.

In Article 61(2)(b) (right to be included in list of practitioners providing general dental services) the words “resident in Northern Ireland” shall cease to have effect.

In Article 62(2)(b) (right to be included in list of persons providing general ophthalmic services) the words “resident in Northern Ireland and” shall cease to have effect.

In Article 87(1) (expenses of certain bodies) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.

In Article 88(1) (regulation of financial arrangements of certain bodies) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.

In Article 89(1) (remuneration of members of certain bodies) for sub-paragraph (a) there shall be substituted—

- “(a) members of—
 - (i) any body established or appointed under this Order;
 - (ii) a special agency;

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

In Article 90 (accounts of certain bodies) in paragraphs (1), (2)(a) and (2)(b) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.

In Article 92 (directions as to audit) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.

In Article 97(1) (protection for officers) for the words “the Agency or the Staffs Council” where they twice occur there shall be substituted “or the Agency”.

In Schedule 1 (Health and Social Services Boards) in paragraph 11(1)(a) the word “administrative” shall cease to have effect.

In Schedule 3 (the Agency) in paragraphs 10(a) and 12 the word “administrative” shall cease to have effect.

In Schedule 13 (orders under Article 76) in paragraph 1(e) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

In Schedule 1 (offices disqualifying for membership of the Assembly) in Part III in the entry which begins “Chairman of a Health and Social Services Board” after the word “Chairman” there shall be inserted “or any member, not being also an employee.”.

The Health and Medicines (Northern Ireland) Order 1988 (NI 24)

In Article 3 (extension of powers for financing of health services) in paragraph (2) after the word “powers” in the second place where it occurs, there shall be inserted “(exercisable outside as well as within Northern Ireland).”.

The Health and Personal Social Services (Special Agencies)(Northern Ireland) Order 1990 (NI 3)

In Article 4(5) (directions to special agency) at the end there shall be added “and section 17(2) of the Interpretation Act (Northern Ireland) 1954(1) shall apply to a direction under this Article as if the direction were a statutory instrument.”.

PART II

AMENDMENTS COMING INTO OPERATION ON A DAY OR DAYS TO BE APPOINTED UNDER ARTICLE 1(2)

The Human Tissue Act (Northern Ireland) 1962 (c. 19)

In section 1 (removal of parts of bodies for medical purposes)—

- (a) in subsection (4A)(b) after the words “health and social services board” there shall be inserted “or HSS trust”;
- (b) after subsection (8) there shall be added the following subsection—

“(9) In this section “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

(1) 1954 c. 33 (N.I.)

The Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

In section 103 (duty of Department to assume care of children) at the end there shall be added the following subsections—

“(7) The Department may require—

- (a) the directors of an HSS trust to hand over any child accommodated in an HSS home,
- (b) the person in charge of a voluntary home to hand over any child accommodated in the voluntary home, with a view to the child’s being boarded out by the Department, and the child shall thereupon be deemed to have come within the care of the Department under this section.

(8) In this Act—

“HSS home” means a home for the boarding, protection, care and maintenance of children in need of help, being a home managed by an HSS trust;

“HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”

In section 114(1)(b) (maintenance of child in home) after the words “placing him in” there shall be inserted “an HSS home or”.

In section 117(1) (accommodation of children in homes) after the words “voluntary home” there shall be inserted “or HSS home”.

In section 126 (definition of voluntary home) at the end there shall be added

“; or

- (c) a home or hostel provided under Part VII; or
- (d) an HSS home.”.

In section 180(1) (interpretation) at the appropriate place in alphabetical order there shall be inserted—

““HSS home” and “HSS trust” have the meanings assigned to them by section 103(8);”.

The Commissioner for Complaints Act (Northern Ireland) 1969 (c. 25)

In Part II of Schedule 1 (public bodies subject to investigation) the following entry shall be inserted at the appropriate place in alphabetical order—

“A Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

The Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971 (c. 32)

In section 10(1) in the definition of “nursing home” in paragraph (a) after the words “Government department” there shall be inserted “or an HSS trust established under the Health and Personal Social Services (Northern Ireland) Order 1991”.

The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)

In Article 2(2) (interpretation)—

(a) after the definition of “grant-aided” there shall be inserted—

““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;

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“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;”;

- (b) in the definition of “home for persons in need” in paragraph (b) after the word “Ministry” there shall be inserted “or managed by an HSS trust” and in paragraph (f) after the words “government department” there shall be inserted “, HSS trust”;
- (c) after the definition of “officer” there shall be inserted—
““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;”.

In Article 15(4) (general social welfare) the words “Subject to Article 99,” shall cease to have effect and after that paragraph there shall be inserted the following paragraph—

“(5) In so far as it relates to the provision of accommodation, this Article is subject to Articles 36, 36A and 99.”.

In Article 45(1) (travelling expenses of patients, etc.)—

- (a) after the word “payment” there shall be inserted “by the Department or an HSS trust”;
- (b) in sub-paragraph (a) after the words “this Order” there shall be inserted “or the 1991 Order”;
- (c) after sub-paragraph (c) there shall be added the words “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.”.

Article 52 (emergency powers) shall be renumbered as paragraph (1) of that Article and—

- (a) in that paragraph for the words “this Order or the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990” and “this Order or that Order” there shall be substituted “the health and personal social services legislation”;
- (b) after that paragraph there shall be added the following paragraph—
“(2) In this Article, Article 53 and Article 54 “the health and personal social services legislation” means—
 - (a) this Order;
 - (b) the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990; and
 - (c) the 1991 Order.”.

In Article 53 (default powers)—

- (a) in paragraph (1) for the words from the beginning to “1990” there shall be substituted “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”;
- (b) in paragraph (2) for the words from “the provisions” to “1990” there shall be substituted “the appropriate provisions of the health and personal social services legislation”.

In Article 54 (inquiries) for the words “this Order” there shall be substituted “the health and personal social services legislation”.

In Article 67 (co-operation with other bodies) after the words “Health and Social Services Boards” there shall be inserted “, HSS trusts”.

In Article 68 (supply of goods and services)—

- (a) in paragraph (1) for the words “a Health and Social Services Board, the Agency or a special agency” in the first place where they occur there shall be substituted “a body

to which this Article applies” and in the second place where they occur there shall be substituted “or a body to which this Article applies”;

- (b) at the end there shall be added the following paragraph—
- “(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.”.

Article 69 (arrangements with district councils) shall be renumbered as paragraph (1) of that Article and—

- (a) in that paragraph for the words “a Health and Social Services Board and a district council or a special agency and a district council” there shall be substituted “a body to which this Article applies and a district council”;
- (b) in that paragraph for the words “the Health and Social Services Board or, as the case may be, the special agency” there shall be substituted “that body”;
- (c) after that paragraph there shall be added the following paragraph—
- “(2) This Article applies to the following bodies—
- (a) a Health and Social Services Board;
 - (b) a special agency;
 - (c) an HSS trust.”.

In Article 71(1) (arrangements with voluntary organisations) at the beginning there shall be inserted “Subject to Articles 36 and 36A.”.

In Article 83 for paragraph (1) there shall be substituted the following paragraphs—

“(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.”.

In Article 85 for paragraph (2) there shall be substituted the following paragraph—

“(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;

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- (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.”.

In Article 86(1) (property of voluntary organisations)—

- (a) in sub-paragraph (a) after the word “Boards” there shall be inserted “or HSS trusts”;
- (b) after the word “Board” in the first place where it occurs there shall be inserted “, an HSS trust or the trustees for an HSS trust (in this Article referred to as “the transferee”)”;
- (c) for the words “that Board” where they twice occur there shall be substituted “the transferee”.

In Article 97(1) (protection of officers of certain bodies) for the words from the beginning to “as the case requires,” there shall be substituted—

“An officer of—

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

shall not be personally liable in respect of any act done by him in the execution of any function of any such body”.

In Article 98(1) (charges for services) after the words “provided under this Order” there shall be inserted “or the 1991 Order”.

In Article 101(1) (recovery of cost of accommodation) for the words from the beginning to “any person” there shall be substituted “Where under Article 15 or 36 accommodation is provided, or proposed to be provided, for any person”.

In Schedule 15 (charges for services)—

- (a) in paragraph 1(a)(i) after the words “provided under this Order” there shall be inserted “or the 1991 Order”;
- (b) in paragraph 6 after the words “benefit under this Order” there shall be inserted “or the 1991 Order”;
- (c) in paragraph 9 after the words “the Ministry” where they first occur there shall be inserted the words “or an HSS trust” , after those words in the second and third places where they occur there shall be inserted the words “or the HSS trust” and after the words “this Order” there shall be inserted the words “or the 1991 Order”;
- (d) in paragraph 10 after the words “this Order” there shall be added the words “or the 1991 Order”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

In Schedule 1 (offices disqualifying for membership of the Assembly) in Part III at the appropriate place in alphabetical order there shall be inserted the following entry—

“Chairman or non-executive director of a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

In Article 39 (time off for public duties) in paragraph (1) at the end of sub-paragraph (d) there shall be added the words “or a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991”.

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

In Article 99 (expenses of hospital treatment)—

- (a) in paragraph (1) after the words “Health and Social Services Board” there shall be inserted “or HSS trust”;
- (b) in paragraph (2) at the end there shall be added—
““HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

The Social Security (Northern Ireland) Order 1982 (NI 16)

In Article 28 (interpretation) after paragraph (5) there shall be inserted—

“(5A) Where, in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part or of such provisions of this Part as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person’s employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract; and the powers conferred by this paragraph are without prejudice to any other power to make regulations under this Part.”.

The Education and Libraries (Northern Ireland) Order 1986 (NI 3)

In Article 36 (duty of health and social services board to notify its opinion that a child has special educational needs)—

- (a) in paragraph (1) for the words from the beginning to “the opinion that he has” there shall be substituted—
“If a health and social services board—
 - (i) in the course of exercising any of its functions in relation to a child who has not attained the age of five years; or
 - (ii) after receiving notice under paragraph (1A) in respect of a child and making such inquiries as it thinks fit, forms the opinion that the child has”;
- (b) after paragraph (1) there shall be inserted the following paragraphs—
“(1A) If, in the course of the exercise by an HSS trust of any of its functions in relation to a child who has not attained the age of five years, the directors of the trust form the opinion that the child has, or probably has, special educational needs, the directors shall notify the health and social services board for the area in which the child resides of that opinion.

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(1B) In paragraph (1A) “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

The Mental Health (Northern Ireland) Order 1986 (NI 4)

In Article 90(2) (definition of private hospital) at the end there shall be added the words “or in a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

After Article 134 there shall be inserted the following Article—

“HSS trusts

134A.—(1) The Department may by regulations made subject to affirmative resolution make such amendments to this Order as appear to the Department to be necessary or expedient in consequence of, or in connection with, the establishment or proposed establishment of one or more HSS trusts.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may amend this Order so as to—

- (a) apply to a hospital, establishment or facility managed by an HSS trust, any provision of this Order referring or relating to a hospital;
- (b) apply to an HSS trust or the directors of such a trust any provision of this Order referring or relating to a Board;
- (c) otherwise confer on an HSS trust functions corresponding to functions exercisable under this Order by a Board.

(3) In this Article “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

In Article 135(2) after the words “Article 95” there shall be inserted “or 134A”.

The Social Security (Northern Ireland) Order 1986 (NI 18)

In Article 51 (interpretation) after paragraph (2) there shall be inserted—

“(2A) Where, in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a woman’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part or of such provisions of this Part as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the woman’s employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one

contract; and the powers conferred by this paragraph are without prejudice to any other power to make regulations under this Part.”.

The AIDS (Control) (Northern Ireland) Order 1987 (NI 18)

In Article 2(2) (interpretation) at the end there shall be added—

““HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

In Article 3(1) (periodical reports on matters relating to AIDS and HIV) at the end there shall be added “and by each HSS trust”.

In Article 3(2)(b) (publication of reports) after the word “Board” there shall be inserted “or HSS trust”.

In the Schedule (contents of reports) after the word “Board” in each place where it occurs there shall be inserted “or HSS trust”.

The Disabled Persons (Northern Ireland) Act 1989 (c. 10)

In section 7 (persons discharged from hospital accommodation)—

(a) for subsection (1) there shall be substituted the following subsection—

“(1) Where a person is to be discharged from hospital accommodation after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date on which he is to be discharged, the managers of the hospital accommodation shall, as soon as is reasonably practicable after that date is known to them, give written notification of that date to the Board in whose area it appears to the managers that that person is likely to reside after his discharge (unless the managers are that Board).”;

(b) in subsection (2) for the words from “the responsible Board” to the end there shall be substituted “the managers of the hospital accommodation shall, as soon as is reasonably practicable, give written notification of that person’s discharge in accordance with subsection (1).”;

(c) after subsection (2) there shall be inserted the following subsection—

“(2A) Where—

(a) a Board receives a notification given under subsection (1) or (2) with respect to a person who is under the age of 19 on the date on which he is to be, or is, discharged; or

(b) the managers of hospital accommodation from which such a person is to be, or is, discharged as mentioned in subsection (1) or (2) are the Board referred to in subsection (1), that Board shall, as soon as is reasonably practicable, give written notification of the date on which that person is to be, or is, discharged to the education and library board in whose area it appears to the Board that that person is likely to reside after his discharge.”;

(d) for subsections (3) and (4) there shall be substituted the following subsections—

“(3) Where—

(a) a Board receives a notification given with respect to a person under subsection (1) or (2), or

(b) the managers of hospital accommodation from which a person is to be, or is, discharged as mentioned in subsection (1) or (2) are the Board referred to in

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subsection (1), that Board shall, subject to subsection (7), make arrangements for an assessment of the needs of that person with respect to the provision of—

- (i) any health services, or
- (ii) any personal social services.

(4) In making any arrangements under subsection (3) a Board falling within paragraph (a) of that subsection shall consult the managers of the hospital accommodation in question.”;

(d) in subsection (8) for the definition of “responsible Board” there shall be substituted—

““the managers”—

- (a) in relation to hospital accommodation vested in an HSS trust, means the directors of that trust;
- (b) in relation to hospital accommodation vested in the Department, means the Board which administers that accommodation.”.

In section 11(1) (interpretation) at the end of the definition of “hospital accommodation” there shall be added “or an HSS trust” and after that definition there shall be inserted—

““HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991;”.

The Opticians Act 1989 (c. 44)

In section 27 (sale and supply of optical appliances), at the end of subsection (4)(b)(iii) there shall be inserted the words “or the Health and Personal Social Services (Northern Ireland) Order 1991”.