Schedules

SCHEDULE 1

Section 1.

THE NORTHERN IRELAND SOCIAL CARE COUNCIL

Status

1. The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Council's property shall not be regarded as property of, or property held on behalf of, the Crown.

General powers

2.—(1) Subject to any directions given by the Department, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

(2) That includes, in particular—

(a) co-operating with other public authorities in the United Kingdom;

(b) acquiring and disposing of land and other property; and

(c) entering into contracts.

General duty

3. It is the duty of the Council to carry out its functions effectively, efficiently and economically.

Membership

4. The Council shall consist of a chairman and other members appointed by the Department.

Appointment, procedure etc.

5. The Department may by regulations make provision as to—

(a) the appointment of the chairman and other members of the Council (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment);

(b) the tenure of office of the chairman and other members of the Council (including the circumstances in which they cease to hold office or may be removed or suspended from office);

(c) the appointment of, constitution of and exercise of functions by committees and sub-committees of the Council (including committees and sub-committees which consist of or include persons who are not members of the Council); and

(d) the procedure of the Council and any committees or sub-committees of the Council (including the validation of proceedings in the event of vacancies or defects in appointment).

Remuneration and allowances

6.—(1) The Council may pay to its chairman, to any other member of the Council and to any member of a committee or sub-committee who is not a member of the Council, such remuneration and allowances as the Department may determine.

(2) If the Department so determines, the Council shall make provision for the payment of such pension, allowance or gratuities as the Department may determine to or in respect of a person who is or has been the chairman or any other member of the Council.

(3) If the Department determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Council to receive compensation, the Council shall pay to him such compensation as the Department may determine.

(4) Any determination of the Department under this paragraph shall be subject to the approval of the Department of Finance and Personnel.

Chief officer

7.—(1) There shall be a chief officer of the Council who shall be a member of the staff of the Council and shall be responsible to the Council for the general exercise of its functions.

(2) The first chief officer shall be appointed by the Department on such terms and conditions as the Department may determine.

(3) Subject to paragraph 8(3), any chief officer subsequent to the first shall be appointed by the Council on such terms and conditions as the Council may determine.

(4) An appointment under sub-paragraph (3) requires the approval of the Department.

Staff

8.—(1) The Council may appoint such other staff as it considers appropriate.

(2) Subject to sub-paragraph (3), appointments under this paragraph shall be on such terms and conditions as the Council may determine.

(3) The Department may give directions as to—

(a) the appointment of staff under this paragraph and paragraph 7(3) (including any conditions to be fulfilled for appointment); and

(b) the terms and conditions of appointment of staff under the provisions mentioned in sub-paragraph (a).

(4) Different directions may be given under sub-paragraph (3) in relation to different categories of staff.

Delegation of functions

9. The Council may arrange for the discharge of any of its functions by a committee, sub-committee, member or member of staff of the Council or any other person.

Arrangements for the use of staff

10. The Department may by regulations provide for arrangements under which—

(a) members of staff of the Council are placed at the disposal of a prescribed person for the purpose of discharging, or assisting in the discharge of, prescribed functions of that person; or

(b) members of staff of a prescribed person are placed at the disposal of the Council for the purpose of discharging, or assisting in the discharge of, any functions of the Council.

Payments to Council

11. The Department may make payments to the Council of such amounts, at such times and on such conditions (if any) as it considers appropriate.

Accounts

12.—(1) The Council shall keep accounts in such form as the Department may determine.

(2) The Council shall prepare annual accounts in respect of each financial year in such form as the Department may determine.

(3) The Council shall send copies of the annual accounts to the Department and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Department may determine.

(4) The Comptroller and Auditor General shall examine, certify and report on the annual accounts and lay copies of the accounts and of his report before the Assembly.

(5) In this paragraph and paragraph 13 "financial year" means—

(a) the period beginning with the date on which the Council is established and ending with the next 31st March following that date; and

(b) each successive period of twelve months ending with 31st March.

Reports and other information

13.—(1) As soon as possible after the end of each financial year, the Council shall make a report to the Department on the exercise of its functions during the year.

(2) The Council shall provide the Department with such reports and information relating to the exercise of its functions as the Department may from time to time require.

(3) A report made under sub-paragraph (1) shall be published in a manner which the Council considers appropriate.

Application of seal and evidence

14. The application of the seal of the Council shall be authenticated by the signature—

(a) of any member of the Council; or

(b) of any other person who has been authorised by the Council (whether generally or specifically) for that purpose.

15. A document purporting to be duly executed under the seal of the Council or to be signed on its behalf shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

General

16. In the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part II of Schedule 1 (bodies of which all members are disqualified), the following entry shall be inserted at the appropriate place—

"The Northern Ireland Social Care Council.".

17. In the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7), in Schedule 2 (bodies subject to investigation), the following entry shall be inserted at the appropriate place—

"The Northern Ireland Social Care Council.".

18. In the Superannuation (Northern Ireland) Order 1972 (NI 10) in Schedule 1 (employments to which Article 3 of that Order applies) at the end add—

"Employment by the Northern Ireland Social Care Council.".

SCHEDULE 2

Section 49.

SCHEDULE 11 TO THE PRINCIPAL ORDER, AS SUBSTITUTED

"SCHEDULE 11

DISQUALIFICATION OF PERSONS PROVIDING PART VI SERVICES

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—

(a) a list of medical practitioners undertaking to provide general 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.

(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.

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[F1] 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 disqualificationor 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.”.

F1 prosp. subst. by 2005 c. 4

SCHEDULE 3

Section 55.

SCHEDULE 10 TO THE PRINCIPAL ORDER, AS SUBSTITUTED

"SCHEDULE 10

PROHIBITION OF SALE OF MEDICAL PRACTICES

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 general 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,

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.

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 general medical services or personal medical services does not, by itself, make it unlawful under paragraph 1 for the goodwill of his practice to be sold.”.

SCHEDULE 4

Section 56.

REGULATION OF THE PROFESSION OF PHARMACEUTICAL CHEMIST

Matters generally within the scope of an order

1. An order may make provision, in relation to the profession, for any of the following matters (among others)—

(a) the constitution of the Council;

(b) keeping a register of members admitted to practice;

(c) education and training before and after admission to practice;

(d) privileges of members admitted to practice;

(e) standards of conduct and performance;

(f) discipline and fitness to practise;

(g) investigation and enforcement by or on behalf of the Council;

(h) appeals;

(i) default powers exercisable by a person other than the Council.

Manner of exercise of power

2.—(1) The power to make an order may be exercised by amending or repealing any statutory provision (including the Pharmacy (Northern Ireland) Order 1976 (NI 22)) and any other instrument or document.

(2) But an order may not amend any provision of the Medicines Act 1968 (c. 67) other than one contained in Part IV of that Act (pharmacies).

3. The power may be exercised so as to make provision for the delegation of functions, including provision conferring power to make, confirm or approve subordinate legislation.

4. The power may be exercised so as to make provision for the charging of fees.

5. The power may be exercised so as to—

(a) confer functions (including power to pay grants) on Northern Ireland Ministers or departments; or

(b) modify their functions.

6. The power may not be exercised so as to create any criminal offence, except an offence punishable on summary conviction with a fine not exceeding the amount specified as level 5 on the standard scale.

Matters outside the scope of an order

7.—(1) An order may not abolish the Council.

(2) An order may not impose any requirement which would have the effect that a majority of the members of the Council would be persons not included in the register of members admitted to practice.

8.—(1) An order may not provide for any person other than the Council or any of its [committees or] officers to exercise any of the following functions—

(a) keeping the register of members admitted to practice;

(b) determining standards of education and training for admission to practice;

(c) giving advice about standards of conduct and performance.

(2) An order may not provide for any functions conferred by Part IV of the Pharmacy (Northern Ireland) Order 1976 to be exercised otherwise than by the committee appointed under Article 19 of that Order.

Preliminary procedure for making an order

9.—(1) No order shall be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(2) If it is proposed to lay a draft of an order before the Assembly, the Department must first—

(a) publish a draft of the order; and

(b) invite representations to be made to the Department about the draft by—

(i) persons appearing to the Department appropriate to represent the profession,

(ii) persons appearing to the Department appropriate to represent those provided with services by the profession; and

(iii) any other persons appearing to the Department appropriate to consult about the draft.

(3) After the end of the period of three months beginning with the publication of the draft, the Department may lay before the Assembly the draft as published

or that draft with any modifications it considers appropriate, together with a report about the consultation.

Interpretation and application

10. In this Schedule—

"the Council" means the Council of the Pharmaceutical Society of Northern Ireland;

"order" means an order under section 56;

"the profession" means the profession of pharmaceutical chemist.

11. References to regulation of the profession in section 56 include—

(a) the regulation of persons seeking admission to practice or who were, but are no longer, allowed to practise as members of the profession;

(b) the regulation of activities carried on by persons who are not members of the profession but which are carried on in connection with the practice of the profession,

but do not include regulation in relation to any matters for which, by virtue of paragraph 12 of Schedule 3 to the Health Act 1999 (c. 8), provision may be made by an Order in Council under section 60 of that Act.

Schedule 5—Repeals

Status:
Point in time view as at 03/12/2007.

Changes to legislation:
There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001.