

These notes refer to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c.2) which received Royal Assent on 25 February 2008

Health (Miscellaneous Provisions) Act (Northern Ireland) 2008

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 which received Royal Assent on 25 February 2008. They have been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. In these notes:-
“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972.
4. The Act replicates measures, as far as possible, which have been introduced in Scotland by means of the Smoking, Health and Social Care (Scotland) Act 2005 and in England and Wales through the Health and Social Care Act 2001 and the Health and Social Care (Community Health and Standards) Act 2003.
5. The Act introduces changes to the way dental services will be organised. Similar to arrangements which are now operating in England and Wales, it will allow Health and Social Services Boards to provide services either through contracts with individual practices or to directly employ dentists to provide dental services.
6. The Act also makes provisions to further strengthen the quality of primary care services and bring Northern Ireland into line with measures which are in place in England, Wales and Scotland. These measures apply to general medical practitioners, dentists, opticians and pharmacists and include a number of changes to the powers and duties of the Tribunal constituted under Schedule 11 to the 1972 Order and Health and Social Services Boards.

7. It repeals the power to make regulations as to the retirement age of general medical practitioners and dentists and makes provision, where health services are made available to persons not ordinarily resident in Northern Ireland, for charges to be made in respect of those services only in cases determined in accordance with regulations.

CONSULTATION

8. A twelve week consultation on the provisions included in the Act ended on 28 October 2005. The consultation document entitled "Further Measures to improve the provision of Primary Care Services" can be accessed on the Department's web site:

[HTTP://WWW.DHSSPSNI.GOV.UK/ECONSULTATION](http://www.dhsspsni.gov.uk/econsultation)

In general, respondents were supportive of most of the proposals and comments received were taken into account when preparing the provisions in the Act.

9. In response to concerns about the case of Dr Harold Shipman a number of measures were taken forward in England, Wales and Scotland to enhance patient safety. Major changes were also introduced to the way dental services are organised in England and Wales. The main provisions in this Act introduce similar measures in Northern Ireland. Doing nothing or making alternative arrangements was not an option.

OVERVIEW

10. The Act introduces changes to the way dental services are organised. Under current arrangements in some areas it can be difficult to access health service dental care and also difficult to target resources at areas of greatest need. To alleviate these problems and to move to the same arrangements which are now operating in England and Wales the proposed policy change is to allow local commissioning of dental services by Health and Social Services Boards.
11. The Act also extends the functions of the Tribunal which is the principal health service disciplinary body for family health service practitioners. It is an independent body comprising a Chair and deputy Chair appointed by the Lord Chief Justice, a member of the relevant profession and a lay member both appointed by the Department. The Act introduces an additional ground under which the Tribunal may deal with a practitioner who has been referred to it, namely "unsuitability by reason of professional or personal conduct". It also extends the categories of person subject to the Tribunal's jurisdiction to include all practitioners including those practitioners assisting with the provision of services and those practitioners wishing to join a Board's list. At present the Tribunal may direct that a practitioner's name should be removed from the list of a Board (local disqualification) or should be excluded from all Board Lists (general disqualification). The Act removes the sanction of local disqualification, thus if a practitioner is not fit to deliver services in one Board's area he or she should not be able to do so in another.

12. The Act extends the powers of the four Health and Social Services Boards. Currently where it is necessary to protect patients, a Board can refer a case to the Tribunal to suspend a practitioner, while the full case is considered. As this can prove unwieldy the Act introduces the provision for regulations to allow suspension of a listed practitioner directly by a Board. Suspension could take place pending, for instance, referral to the Tribunal or the outcome of a court case or a hearing by a professional regulatory or licensing body. The Act also extends the powers of the Boards to allow payment to suspended practitioners.
13. The Act introduces the power for regulations to provide and set out the criteria for refusal or removal of a practitioner from a Board's list. It also inserts provisions to provide for a Board to admit or retain a practitioner on its lists as long as he or she agrees to be bound by specific conditions and extends the existing list system to embrace all practitioners including locums, deputies and employees.

COMMENTRY ON SECTIONS

Section 1: Persons performing primary medical services – listing subject to conditions

Section 1 amends Article 57G of the 1972 Order to provide that a person's inclusion or continued inclusion on the list of persons performing primary medical services may be subject to conditions determined by a Board.

Sections 2 – 7: Provision of dental services

Sections 2 to 7 introduce a new specific duty on each Health and Social Services Board to provide or secure the provision of primary dental services within its area to the extent that it considers necessary to meet all reasonable requirements. New Articles 61 to 61 F are inserted into the 1972 Order. These govern the terms and content of the new general dental services contract and who may provide or perform primary dental services under such a contract. They also provide regulation making powers which will be used to set out the detail of the rights and obligations under the new contract and also to prescribe the ways in which persons performing primary dental services are to be listed. The new arrangements also prescribe the way in which patient charges can be made and recovered for dental services and set out dental charging exemptions.

Section 8: Ophthalmic services

Section 8 inserts new Article 62A into the 1972 Order providing regulation making powers to prescribe the ways in which persons performing any general ophthalmic services are to be listed and the criteria an individual will have to meet in order to be listed. It also provides regulation making powers in respect of suspension from a list by a Board and for a practitioner's inclusion or continued inclusion on a list to be subject to conditions determined by a Board.

Section 9: Local Optical Committees

Section 9 amends Article 55 of the 1972 Order to allow Ophthalmic Medical Practitioners to be members of Local Optical Committees.

Section 10: Pharmaceutical services

Section 10 inserts new Article 63AA into the 1972 Order making similar provisions for persons providing pharmaceutical services as Section 8 does for ophthalmic services.

Section 11: Disqualification by the Tribunal

Section 11 introduces the amendments to Schedule 11 of the 1972 Order (disqualification by the Tribunal) as set out in Schedule 1.

Section 12: Charges for services provided to persons not ordinarily resident in Northern Ireland

Section 12 provides regulation making powers in relation to health services charges and exemption from charges for persons not ordinarily resident in Northern Ireland. This will allow the Department to consider exemption from charges to overseas visitors on humanitarian grounds. This exemption would be considered if an overseas visitor, who had been granted leave to enter Northern Ireland for a course of treatment, applied for exemption of charges.

Section 13: Retirement of practitioners

Section 13 repeals Article 4 of the Health and Medicines (Northern Ireland) Order 1988 which empowered the Department to make regulations specifying the age at which general medical practitioners and dentists must retire from practice. This is within the spirit of the EC Directive regarding discrimination on grounds of age in the field of employment.

Section 14: Minor and consequential amendments

Section 14 makes minor and consequential amendments to the 1972 Order.

Section 15: Interpretation

Section 15 defines some of the terms used in the Act.

Sections 16 and 17: Supplementary provisions

Sections 16 and 17 contain supplementary provisions.

Sections 18 and 19: Commencement and Short title

Sections 18 and 19 set out the arrangements for commencement of the provisions and the short title of the Act.

Schedule 1: Disqualification by the Tribunal

Schedule 1 makes a number of changes to Schedule 11 to the 1972 Order, which relates to the Tribunal. The Schedule introduces an additional ground under which the Tribunal may deal with a practitioner, namely “unsuitability by reason of professional or personal conduct”. This will add a third condition for disqualification to the two existing disqualification conditions of fraud and prejudice to the efficiency of the relevant service. The Schedule extends the categories of person subject to the Tribunal’s jurisdiction to embrace all practitioners, including those who assist in the provision of services and those wishing to join a Board’s list.

Schedule 2: Repeals

Schedule 2 sets out the provisions that are repealed by the Act.

HANSARD REPORTS

14. The following table sets out the dates of the Hansard reports for each stage of the Act’s passage through the Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction of the Act to the Committee for Health, Social Services and Public Safety	24 May 2007
Introduction to the Assembly	5 June 2007
Second Stage debate	19 June 2007
Committee Stage - evidence from the British Medical Association (Northern Ireland) and the British Dental Association (Northern Ireland)	21 June 2007
Committee Stage – evidence from the Pharmaceutical Society of Northern Ireland , Western Health and Social Services Council and the Southern Health and Social Services Council	28 June 2007
Committee Stage– evidence from the Theatrical Management Association, Arts Council of Northern Ireland and the Smoke free Northern Ireland coalition	5 July 2007
Committee Stage – consideration of sections 1 and 2	6 September 2007

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<i>STAGE</i>	<i>DATE</i>
Committee Stage – consideration of sections 3 to 14 (sections 4,9 and 10 referred for further consideration)	13 September 2007
Committee Stage – consideration of sections 4,9,10, 15 to 20 , Schedules 1 and 2	20 September 2007
Committee’s report on the Act - Report number 01/07R	11 October 2007
Consideration Stage in the Assembly	15 January 2008
Further Consideration Stage	28 January 2008
Final Stage	5 February 2008