



## 2009 CHAPTER 1

### *Restructuring of administration of health and social care*

#### **Restructuring of administration of health and social care**

1.—(1) The following bodies are dissolved—

- (a) Health and Social Services Boards;
- (b) the Mental Health Commission;
- (c) the Central Services Agency; and
- (d) Health and Social Services Councils.

(2) The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority established under Article 3 of the [Health and Personal Social Services \(Quality, Improvement and Regulation\) \(Northern Ireland\) Order 2003 \(NI 9\)](#)—

- (a) is renamed the Health and Social Care Regulation and Quality Improvement Authority; and
- (b) is referred to in this Act as “RQIA”.

(3) Health and Social Services trusts established under Article 10 of the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#)—

- (a) are renamed Health and Social Care trusts; and
- (b) are referred to in this Act as “HSC trusts”.

(4) Special health and social services agencies established under Article 3 of the [Health and Personal Social Services \(Special Agencies\) \(Northern Ireland\) Order 1990 \(NI 3\)](#)—

- (a) are renamed special health and social care agencies; and
- (b) are referred to in this Act as “special agencies”.

- (5) In this Act “the health and social care bodies” means—
- (a) the Regional Health and Social Care Board, established under section 7 and referred to in this Act as “the Regional Board”;
  - (b) the Regional Agency for Public Health and Social Well-being, established under section 12 and referred to in this Act as “the Regional Agency”;
  - (c) the Regional Business Services Organisation, established under section 14 and referred to in this Act as “RBSO”;
  - (d) HSC trusts;
  - (e) special agencies;
  - (f) the Patient and Client Council, established under section 16;
  - (g) RQIA.

*Department’s role in promoting and providing health and social care*

**Department’s general duty**

**2.—(1)** The Department shall promote in Northern Ireland an integrated system of—

- (a) health care designed to secure improvement—
  - (i) in the physical and mental health of people in Northern Ireland, and
  - (ii) in the prevention, diagnosis and treatment of illness; and
- (b) social care designed to secure improvement in the social well-being of people in Northern Ireland.

(2) For the purposes of subsection (1) the Department shall provide, or secure the provision of, health and social care in accordance with this Act and any other statutory provision, whenever passed or made, which relates to health and social care.

(3) In particular, the Department must—

- (a) develop policies to secure the improvement of the health and social well-being of, and to reduce health inequalities between, people in Northern Ireland;
- (b) determine priorities and objectives in accordance with section 4;
- (c) allocate financial resources available for health and social care, having regard to the need to use such resources in the most economic, efficient and effective way;
- (d) set standards for the provision of health and social care;
- (e) prepare a framework document in accordance with section 5;
- (f) formulate the general policy and principles by reference to which particular functions are to be exercised;

- (g) secure the commissioning and development of programmes and initiatives conducive to the improvement of the health and social well-being of, and the reduction of health inequalities between, people in Northern Ireland;
- (h) monitor and hold to account the Regional Board, the Regional Agency, RBSO and HSC trusts in the discharge of their functions;
- (i) make and maintain effective arrangements to secure the monitoring and holding to account of the other health and social care bodies in the discharge of their functions;
- (j) facilitate the discharge by bodies to which Article 67 of the Order of 1972 applies of the duty to co-operate with one another for the purposes mentioned in that Article.

(4) The Department shall discharge its duty under this section so as to secure the effective co-ordination of health and social care.

(5) In this Act—

“health care” means any services designed to secure any of the objects of subsection (1)(a);

“health inequalities” means inequalities in respect of life expectancy or any other matter that is consequent on the state of a person’s health;

“social care” means any services designed to secure any of the objects of subsection (1)(b).

### **Department’s general power**

3.—(1) The Department may—

- (a) provide, or secure the provision of, such health and social care as it considers appropriate for the purpose of discharging its duty under section 2; and
- (b) do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of that duty.

(2) Subsection (1) does not affect the Department’s powers apart from this section.

### **Department’s priorities and objectives**

4.—(1) The Department shall determine, and may from time to time revise, its priorities and objectives for the provision of health and social care in Northern Ireland.

(2) Before determining or revising any priorities or objectives under this section, the Department must consult such bodies or persons as it thinks appropriate.

(3) Where the Department is of the opinion that because of the urgency of the matter it is necessary to act under subsection (1) without consultation—

- (a) subsection (2) does not apply; but
- (b) the Department must as soon as reasonably practicable give notice to such bodies as it thinks appropriate of the grounds on which the Department formed that opinion.

### **The framework document**

**5.—**(1) The Department shall prepare a document (in this Act referred to as “the framework document”) setting out in relation to each health and social care body—

- (a) the main priorities and objectives of the body in carrying out its functions and the process by which it is to determine further priorities and objectives;
- (b) the matters for which the body is responsible;
- (c) the manner in which the body is to discharge its functions and conduct its working relationship with—
  - (i) the Department, and
  - (ii) any other body specified in the document; and
- (d) the arrangements for providing the Department with information to enable it to carry out its functions in relation to the body under section 2(3)(h) or (i).

(2) The framework document may contain—

- (a) such guidance relating to the carrying out by each health and social care body of its functions, and
- (b) such other material pertaining to the body or its functions,

as the Department considers appropriate.

(3) The Department—

- (a) shall keep the framework document under review; and
- (b) may from time to time revise it.

(4) The Department must carry out its duties under subsections (1) to (3) in the manner and to the extent that appear to it to be best calculated to promote—

- (a) health and social care;
- (b) the economy, efficiency and effectiveness of health and social care bodies; and
- (c) economy, efficiency and effectiveness in connection with the matters in relation to which those bodies have functions.

(5) In preparing the framework document, or any revision of it which appears to the Department to be significant, the Department must consult—

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- (a) each health and social care body as respects its functions (or persons considered by the Department to represent that body); and
  - (b) any other bodies or persons the Department considers appropriate.
- (6) Each health and social care body shall have regard to the framework document in carrying out its functions.

### **Power of Department to give directions to certain bodies**

6.—(1) The Department may give directions of a general or specific nature to—

- (a) the Regional Board,
- (b) the Regional Agency, and
- (c) RBSO,

as to the carrying out by that body of any of its functions.

(2) Before giving any directions to a body under subsection (1) the Department must consult that body.

(3) Where the Department is of the opinion that because of the urgency of the matter it is necessary to give directions under subsection (1) without consulting the body concerned—

- (a) subsection (2) does not apply; but
- (b) the Department must as soon as reasonably practicable give notice to that body of the grounds on which the Department formed that opinion.

(4) Where the Department is of the opinion that (for any reason other than the urgency of the matter) it is not reasonably practicable to comply with subsection (2)—

- (a) that subsection does not apply; but
- (b) the Department must as soon as reasonably practicable give notice to the body concerned of the grounds on which the Department formed that opinion.

(5) It is the duty of a body to comply with any directions given to it under subsection (1).

(6) Subsection (1) does not affect the Department's powers to give directions apart from this section.

### *The Regional Board*

### **The Regional Health and Social Care Board**

7.—(1) There shall be a body corporate to be known as the Regional Health and Social Care Board.

(2) Schedule 1 applies in relation to the Regional Board.

### **Functions of the Regional Board**

**8.—**(1) The Regional Board shall exercise on behalf of the Department—

- (a) such functions as are transferred to it by section 24; and
- (b) such other functions of the Department (including functions imposed under an order of any court) with respect to the administration of health and social care as the Department may direct.

(2) The Regional Board must exercise its functions with the aim of—

- (a) improving the performance of HSC trusts, by reference to such indicators of performance as the Department may direct; and
- (b) establishing and maintaining effective systems—
  - (i) for managing the performance of HSC trusts;
  - (ii) for commissioning health and social care;
  - (iii) for ensuring that resources are used in the most economic, efficient and effective way in commissioning such care.

(3) The Regional Board must in respect of each financial year prepare and publish a document (“the commissioning plan”) setting out such details as the Department may direct concerning—

- (a) the health and social care which the Board is to commission in that year; and
- (b) the costs to be incurred in that regard.

(4) The Regional Board—

- (a) must, in drawing up the commissioning plan, consult the Regional Agency and have due regard to any advice or information provided by it; and
- (b) must not publish a commissioning plan unless it has been approved by the Regional Agency.

(5) The functions mentioned in subsection (1)(a) and any function conferred on the Regional Board by any other statutory provision (whenever passed or made) are deemed to be functions which the Department has directed the Regional Board to exercise under subsection (1)(b).

(6) For the purposes of carrying out its functions the Regional Board may, on behalf of the Department, exercise the Department’s general power under section 3.

(7) It is the duty of the Regional Board to carry out its functions in the manner which it considers is best calculated to discharge the Department’s general duty under section 2(1).

(8) Subsections (6) and (7) apply subject to any directions given to the Regional Board by the Department under section 6.

### **Local Commissioning Groups**

**9.—(1)** The Regional Board shall in accordance with paragraph 7 of Schedule 1 appoint a prescribed number of committees to be called “Local Commissioning Groups”.

(2) Each Local Commissioning Group shall exercise its functions as regards such area of Northern Ireland as may be prescribed.

(3) Each Local Commissioning Group shall exercise—

- (a) such functions with respect to the commissioning of health and social care as may be prescribed; and
- (b) such other functions as the Regional Board may, with the agreement of the Department, determine.

(4) Each Local Commissioning Group must—

- (a) exercise its functions in accordance with any scheme for the time being having effect under Article 18 of the Order of 1972; and
- (b) in connection with the exercise of its functions—
  - (i) work in collaboration with the Regional Agency and have due regard to any advice or information provided by it; and
  - (ii) undertake such consultation as the Department may direct.

(5) Each Local Commissioning Group must exercise its functions with the aim of—

- (a) improving the health and social well-being of people in the area as regards which the Local Commissioning Group exercises its functions;
- (b) planning and commissioning health and social care to meet the needs of people in that area;
- (c) securing the delivery to people in that area of health and social care that is efficient, co-ordinated and cost-effective;
- (d) improving the availability and quality of health and social care in that area.

(6) Regulations may—

- (a) make provision for the membership of Local Commissioning Groups;
- (b) modify the application of paragraphs 7 to 11 of Schedule 1 in relation to those Groups;
- (c) make such further provision in relation to those Groups as the Department considers appropriate.

(7) Before making regulations under subsection (6), the Department must consult the Regional Board.

**Power of Regional Board to give directions and guidance to HSC trusts**

**10.**—(1) The Regional Board may give directions of a general or specific nature to an HSC trust as to the carrying out by that trust of any of its functions.

(2) The Regional Board may give guidance to an HSC trust as to the carrying out by that trust of any of its functions.

(3) The Regional Board must—

- (a) consult the HSC trust concerned, and
- (b) obtain the approval of the Department,

before giving any directions under subsection (1).

(4) Where the Regional Board is of the opinion that because of the urgency of the matter it is necessary to give directions under subsection (1) without consulting the HSC trust concerned—

- (a) subsection (3)(a) does not apply; but
- (b) the Regional Board must as soon as reasonably practicable give notice to the HSC trust concerned of the grounds on which the Regional Board formed that opinion.

(5) The Regional Board must not give any direction under subsection (1) or any guidance under subsection (2) that would be inconsistent with—

- (a) the framework document; or
- (b) any direction given to the HSC trust by the Department under paragraph 6 of Schedule 3 to the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#).

(6) It is the duty of an HSC trust—

- (a) to comply with any directions given to it under subsection (1);
- (b) to have regard to any guidance given to it under subsection (2).

(7) The Department may by regulations provide that this section is to apply, subject to such modifications as may be prescribed, in relation to any prescribed body exercising on behalf of the Regional Board such functions as may be prescribed.

**Provision of information, etc. to Regional Board by HSC trusts**

**11.**—(1) Part 2 of Schedule 3 to the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#) (duties, powers and status of HSC trusts) is amended as follows.

(2) After paragraph 6 insert—

“**6A.**—(1) An HSC trust shall record such information with respect to the exercise of its functions as the Regional Board may direct.

(2) Information shall be recorded in such form, and retained for such period, as the Regional Board may direct.

(3) An HSC trust shall furnish to the Regional Board such reports, returns and other information as the Regional Board may require.

(4) In sub-paragraph (3) the reference to reports, returns and other information includes any report, return or other information that an HSC trust is required to provide to the Department under paragraph 7 or 8.”.

### *The Regional Agency*

#### **The Regional Agency for Public Health and Social Well-being**

**12.**—(1) There shall be a body corporate to be known as the Regional Agency for Public Health and Social Well-being.

(2) Schedule 2 applies in relation to the Regional Agency.

#### **Functions of the Regional Agency**

**13.**—(1) The Regional Agency shall exercise on behalf of the Department—

- (a) the health improvement functions mentioned in subsection (2); and
- (b) the health protection functions mentioned in subsection (3).

(2) The health improvement functions are—

- (a) developing and providing, or securing the provision of, programmes and initiatives designed to secure the improvement of the health and social well-being of, and reduce health inequalities between, people in Northern Ireland; and
- (b) health promotion, including in particular enabling people in Northern Ireland to increase control over and improve their health and social well-being.

(3) The health protection functions are the protection of the community (or any part of the community) against—

- (a) communicable disease, in particular by the prevention or control of such disease;
- (b) other dangers to health and social well-being, including dangers arising on environmental or public health grounds or arising out of emergencies.

(4) For the purpose of the exercise of the health improvement or health protection functions the Regional Agency may—

- (a) engage in or commission research;
- (b) obtain and analyse data and other information;
- (c) provide laboratory and other technical and clinical services;

- (d) provide training in relation to matters in respect of which the Regional Agency has functions;
  - (e) make available to any other body such persons, materials and facilities as it thinks appropriate;
  - (f) provide information, advice and assistance.
- (5) The Department may by order amend subsections (1) to (4) for the purposes of altering the functions of the Regional Agency.
- (6) In the exercise of its functions the Regional Agency must—
- (a) co-operate with other bodies which exercise functions relating to health improvement or health protection; and
  - (b) in particular, provide the Department, the Regional Board and Local Commissioning Groups with such information, advice and assistance as they may reasonably require in connection with the exercise of their functions.
- (7) A body mentioned in subsection (6)(a) must co-operate with the Regional Agency in the exercise by that body of any such functions as are mentioned there.
- (8) The disclosure of information to or by the Regional Agency in pursuance of a duty of co-operation under subsection (6) or (7) does not breach any restriction on the disclosure of information (however imposed); but this subsection does not authorise a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).

### *RBSO*

#### **The Regional Business Services Organisation**

**14.—**(1) There shall be a body corporate to be known as the Regional Business Services Organisation.

(2) Schedule 3 applies in relation to RBSO.

#### **Functions of RBSO**

**15.—**(1) RBSO shall on behalf of the Department provide, or secure the provision of, support services to other health and social care bodies in accordance with directions under subsection (4).

(2) Support services are services which are required to be carried out by, or on behalf of, any of those health and social care bodies and include—

- (a) administrative support, advice and assistance;
- (b) financial services;
- (c) human resource, personnel and corporate services;

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- (d) training;
  - (e) the management and maintenance of buildings, equipment and land;
  - (f) information technology and information management;
  - (g) the procurement of goods and services;
  - (h) legal, medical, scientific or other professional services;
  - (i) contractual compliance, internal audit and fraud prevention.
- (3) It is the duty of RBSO to put in place arrangements for providing, or securing the provision, of support services under this section which—
- (a) secure that those services are provided in the most economic, efficient and effective way; and
  - (b) are approved by the Department.
- (4) After consultation with each of the health and social care bodies, the Department may direct that such support services as the Department may direct shall be provided by RBSO to such health and social care bodies as the Department may direct.
- (5) RBSO may charge for support services provided by it.
- (6) The Department may by order amend subsection (2).

#### *Patient representation and public involvement*

#### **The Patient and Client Council**

- 16.—**(1) There shall be a body corporate to be known as the Patient and Client Council.
- (2) Schedule 4 applies in relation to the Patient and Client Council.

#### **Functions of the Patient and Client Council**

- 17.—**(1) The Patient and Client Council has the following functions as respects the provision of health and social care in Northern Ireland—
- (a) representing the interests of the public;
  - (b) promoting involvement of the public;
  - (c) providing assistance (by way of representation or otherwise) to individuals making or intending to make a complaint relating to health and social care for which a body to which this section applies is responsible;
  - (d) promoting the provision by bodies to which this section applies of advice and information to the public about the design, commissioning and delivery of health and social care;
  - (e) such other functions as may be prescribed.

(2) In exercising its functions under subsection (1)(a), the Patient and Client Council must—

- (a) consult the public about matters relating to health and social care; and
- (b) report the views of those consulted to the Department (where it appears to the Council appropriate to do so) and to any other body to which this section applies appearing to have an interest in the subject matter of the consultation.

(3) In exercising its functions under subsection (1)(b), the Patient and Client Council shall promote the involvement of the public in consultations or processes leading (or potentially leading) to decisions by a body to which this section applies which would or might affect (whether directly or not) the health and social well-being of the public.

(4) In exercising its functions under subsection (1)(c), the Patient and Client Council shall arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision (by way of representation or otherwise) of assistance to individuals making or intending to make a complaint of a prescribed description.

(5) The Patient and Client Council shall—

- (a) undertake research and conduct investigations into the best methods and practices for consulting the public about, and involving them in, matters relating to health and social care; and
- (b) provide advice regarding those methods and practices to bodies to which this section applies.

(6) The Patient and Client Council must publish any report under subsection (2)(b) in such manner as the Department may direct.

(7) In this section “the public” includes individuals, a group or community of people and a section of the public, however selected.

(8) This section and sections 18 and 19 apply to—

- (a) the Department;
- (b) the Regional Board;
- (c) the Regional Agency;
- (d) HSC trusts; and
- (e) special agencies.

(9) For the purposes of this section and sections 18 to 20 a body is responsible for health and social care—

- (a) if the body provides or will provide that care to individuals; or
- (b) if another person provides, or will provide, that care to individuals—
  - (i) at that body’s direction;

- (ii) on its behalf; or
- (iii) in accordance with an agreement or arrangements made by that body with that other person;

and references to the provision of care include references to the provision of care jointly with another person.

### **Duty to co-operate with the Patient and Client Council**

**18.**—(1) A body to which this section applies must co-operate with the Patient and Client Council in the exercise by the Council of its functions.

(2) In particular, such a body must—

- (a) consult the Patient and Client Council with respect to such matters, and on such occasions, as the body considers appropriate, having regard to the functions of the Council;
- (b) furnish to the Council, subject to such conditions as the body may specify, such information as the Council considers necessary to enable it properly to exercise its functions; and
- (c) have regard to advice provided by the Council under section 17(5)(b).

(3) Regulations may make provision authorising members of the Patient and Client Council to enter, for the purposes of any of the Council's functions, premises of a kind described in subsection (4).

(4) Those premises are—

- (a) any premises controlled by a body to which this section applies or by a person providing primary medical services or general dental, pharmaceutical or ophthalmic services under Part 2 or 6 of the Order of 1972; and
- (b) premises of such other description as may be prescribed.

(5) Any power of entry conferred by regulations under subsection (3) is exercisable only so far as is necessary for the purpose of enabling the Patient and Client Council to exercise its functions, and is subject to such conditions as may be prescribed.

(6) A body to which this section applies shall have due regard to any views expressed by the Patient and Client Council regarding health and social care for which that body is responsible.

### **Public involvement and consultation**

**19.**—(1) Each body to which this section applies must take such steps as it considers appropriate—

- (a) to promulgate information about the health and social care for which it is responsible;

- (b) to obtain information about—
  - (i) the needs of persons to whom that care is being or may be provided; and
  - (ii) the efficacy of that care;
- (c) to encourage and assist persons to whom that care is being or may be provided—
  - (i) to avail of that care in an appropriate manner, having regard to the need to use resources in the most economic, efficient and effective way; and
  - (ii) to maintain and improve their own health and social well-being.

(2) In particular, each body to which this section applies must, before the end of the period of 9 months beginning with the day appointed for the coming into operation of this section, or, if later, the establishment of the body concerned—

- (a) prepare a consultation scheme in accordance with section 20; and
- (b) in the case of a health and social care body, submit the scheme to the Department.

(3) The Department may direct any health and social care body to which this section applies to submit a revised scheme to it.

(4) The Department may, after consulting the Patient and Client Council, approve a consultation scheme submitted to it under this section with or without amendments.

### **Public involvement: consultation schemes**

**20.—**(1) A consultation scheme must make it clear how the body to which the scheme is to apply will make arrangements with a view to securing, as respects health and social care for which it is responsible, that the following are (directly or through representatives) involved in and consulted on the matters mentioned in subsection (2), namely—

- (a) the Patient and Client Council;
- (b) persons to whom that care is being or may be provided; and
- (c) the carers of such persons (that is to say the individuals who provide a substantial amount of care on a regular basis for such persons but who are not employed to do so by a health and social care body).

(2) Those matters are—

- (a) the planning of the provision of that care;
- (b) the development and consideration of proposals for changes in the way that care is provided; and
- (c) decisions to be made by that body affecting the provision of that care.

(3) The consultation scheme must provide for the body to which it is to apply—

- (a) to have due regard to any comments submitted to it in response to the consultation; and
- (b) to prepare a written statement which—
  - (i) summarises the comments received; and
  - (ii) sets out the body's response to those comments.

(4) The consultation scheme must provide that the body to which it is to apply shall take such steps as in its opinion will give adequate publicity to the statement.

#### *HSC trusts*

### **Duty on HSC trusts in relation to improvement of health and social well-being**

**21.** It is the duty of an HSC trust to exercise its functions with the aim of improving the health and social well-being of, and reducing health inequalities between, those for whom it provides, or may provide, health and social care.

#### *Public-private partnerships*

### **Public-private partnerships**

**22.—(1)** A body to which this section applies may form, or participate in forming, companies to provide facilities or services for—

- (a) HSC trusts; or
- (b) any other persons or bodies exercising functions, or otherwise providing services, under any statutory provision relating to the promotion or provision of health and social care.

(2) A body to which this section applies may, with a view to securing or facilitating the provision by companies of facilities or services for persons or bodies falling within subsection (1)(a) or (b)—

- (a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or
- (b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,

or both.

(3) For the purposes of subsections (1) and (2) it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—

- (a) only to persons or bodies falling within subsection (1)(a) or (b); or
  - (b) to persons or bodies falling within subsection (1)(b) only in their capacities as persons or bodies such as are mentioned in that provision.
- (4) This section applies to—
- (a) the Department; and
  - (b) a health and social care body, other than RQIA or the Patient and Client Council.
- (5) In this section—
- “companies” means companies within the meaning of the Companies Act 2006 (c. 46);
  - “facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus.
- (6) This section does not affect any powers of any body to which this section applies that are exercisable apart from this section.

*Transfer of assets, liabilities and functions*

**Schemes for transfer of assets and liabilities**

**23.—**(1) The power conferred by subsection (2) is exercisable in connection with the dissolution of the bodies mentioned in section 1(1).

(2) The Department shall make one or more schemes for the transfer of designated assets and liabilities of a dissolved body to—

- (a) a health and social care body; or
- (b) the Department.

(3) The power conferred by subsection (4) is exercisable in connection with—

- (a) any change in the administrative structures for health and social care effected by or under this Act; or
- (b) the efficient management of any assets or liabilities used for the purposes of health and social care.

(4) The Department may at any time make one or more schemes for the transfer—

- (a) of designated assets or liabilities of the Department to a health and social care body;
- (b) of designated assets or liabilities of a health and social care body to—
  - (i) the Department; or
  - (ii) any other health and social care body.

(5) On the transfer date the designated assets or liabilities are transferred and vest in accordance with the scheme.

(6) Schedule 5 has effect and in that Schedule—

(a) Part 1 contains provisions about schemes; and

(b) Part 2 contains provisions about the final accounts and reports of certain dissolved bodies.

(7) In this section and Schedule 5—

“designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;

“dissolved body” means a body dissolved by section 1(1);

“scheme” means a scheme under this section;

“the transfer date”, in relation to a scheme, means the date specified by the scheme as the date on which it is to have effect.

### **Transfer of functions of Health and Social Services Boards**

**24.—(1)** The functions exercisable immediately before the date on which section 1(1)(a) comes into operation by Health and Social Services Boards under any statutory provision or by virtue of a direction of the Department shall insofar as they consist of, or relate to—

(a) health improvement functions (within the meaning of section 13), or

(b) health protection functions (within the meaning of that section),

be exercisable as from that date by the Regional Agency.

(2) The other functions exercisable immediately before that date by Health and Social Services Boards under any statutory provision or by virtue of a direction of the Department shall as from that date be exercisable by the Regional Board in accordance with section 8.

(3) Subsections (1) and (2)—

(a) apply only to provisions or directions which have continuing effect; and

(b) are subject to any order under subsection (4).

(4) The Department may by order provide that subsections (1) and (2) are not to apply to any specified function.

(5) An order under subsection (4) may—

(a) provide for a specified function to be exercised by the Department or by a health and social care body; or

(b) provide that a specified function is to cease to be exercised.

(6) Where an order under subsection (4) provides for a specified function to be exercised by a health and social care body, the order may provide for that body to exercise that function on the Department’s behalf.

(7) In this section “specified function” means any function of a Health and Social Services Board specified in an order made under subsection (4).

#### **Transfer of functions of the Mental Health Commission**

**25.—**(1) The functions exercisable immediately before the date on which section 1(1)(b) comes into operation by the Mental Health Commission under any statutory provision shall be exercisable as from that date by RQIA.

(2) Subsection (1) only applies to provisions which have continuing effect.

#### **Transfer of functions of Central Services Agency**

**26.—**(1) The functions exercisable immediately before the date on which section 1(1)(c) comes into operation by the Central Services Agency under any statutory provision or by virtue of any direction of the Department shall be exercisable as from that date by RBSO.

(2) Subsection (1)—

- (a) applies only to provisions or directions which have continuing effect; and
- (b) is subject to any order under subsection (3).

(3) The Department may by order provide that subsection (1) is not to apply to any specified function.

(4) An order under subsection (3) may—

- (a) provide for a specified function to be exercised by the Department or by a health and social care body; or
- (b) provide that a specified function is to cease to be exercised.

(5) Where an order under subsection (3) provides for a specified function to be exercised by a health and social care body, the order may provide for that body to exercise that function on the Department’s behalf.

(6) In this section “specified function” means any function of the Central Services Agency specified in an order made under subsection (3).

#### **Amendment of statutory and other references to dissolved bodies, etc.**

**27.—**(1) This section applies for the purposes of a transfer of functions effected by section 24, 25 or 26; and in this section, in its application for the purposes of such a transfer—

- “the transferor” means the body from which functions are transferred;
- “the transferee” means the body to which functions are transferred;
- “the transfer date” means the date on which functions are transferred.

(2) In relation to any time after the transfer date, any reference in any statutory provision or document to a Health and Social Services Board (whether general or particular) shall—

- (a) in relation to any function transferred by section 24(1), be construed as a reference to the Regional Agency;
- (b) in relation to any function transferred by section 24(2), be construed as a reference to the Regional Board;

and any reference which delimits functions of a Board by reference to its area shall, in relation to that time, be disregarded.

(3) In relation to any time after the transfer date, any reference in any statutory provision or document to the Mental Health Commission shall, in relation to any function transferred by section 25(1), be construed as a reference to RQIA.

(4) In relation to any time after the transfer date, any reference in any statutory provision or document to the Central Services Agency shall, in relation to any function transferred by section 26(1), be construed as a reference to RBSO.

(5) Subsections (2) to (4) apply unless contrary provision is made by or under this Act or the context otherwise requires.

(6) A transfer of functions to which this section applies does not affect the validity of anything done by, or in relation to, the transferor before the transfer date.

(7) Anything which before the transfer date was done by or in relation to the transferor in relation to any transferred function shall, if in effect immediately before that date, continue to have effect to the same extent and subject to the same provisions as if it had been done by, or in relation to, the transferee.

(8) Anything (including any legal proceedings) in the process of being done by or in relation to the transferor immediately before the transfer date may, so far as it relates to any transferred function, be continued by or in relation to the transferee.

### **Dissolution of special agencies**

**28.**—(1) The [Health and Personal Social Services \(Special Agencies\) \(Northern Ireland\) Order 1990 \(NI 3\)](#) is amended as follows.

(2) In the Schedule, after paragraph 8 (execution of contracts and instruments not under seal) insert the following paragraph—

*“Dissolution of special agencies*

**8A.**—(1) The Department may by order dissolve a special agency.

(2) An order under this paragraph may be made—

- (a) on the application of the special agency concerned; or

- (b) if the Department considers it appropriate in the interests of health and social care.
- (3) Except where it appears to the Department necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.
- (4) An order under this paragraph may provide for the transfer to—
- (a) the Department, or
  - (b) such other HSC body as the order may specify,
- of such of the assets and liabilities of the special agency which is dissolved as the Department considers appropriate.
- (5) The Department must exercise its powers under sub-paragraph (4) so as to ensure that all the liabilities of the special agency are transferred.
- (6) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the special agency which is dissolved including provision for the making of a scheme by the special agency or such other body as may be specified in the order.
- (7) An order under this paragraph—
- (a) may include such incidental, supplemental or transitional provision as the Department considers appropriate; and
  - (b) shall be subject to negative resolution.
- (8) Without prejudice to the generality of sub-paragraphs (4) to (7), if a special agency is dissolved under this paragraph, the Department, or such other HSC body as the Department may direct, shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of regulations made under paragraph 6, would otherwise have been the responsibility of the special agency which has been dissolved.
- (9) A special agency may not be dissolved or wound up except in accordance with this paragraph.”.

### *Supplementary*

#### **Orders, regulations, guidance and directions**

- 29.**—(1) No order shall be made under section 13(5), 15(6) or 30(1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.
- (2) Regulations under this Act and orders under section 24(4) or 26(3) are subject to negative resolution.
- (3) Any guidance issued or directions given by the Department or the Regional Board under this Act—

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*Status: This is the original version (as it was originally enacted).*

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- (a) shall be in writing; and
- (b) may be varied or revoked by subsequent guidance or directions so issued or given.

(4) Regulations and orders under this Act may contain such incidental, supplementary, transitional and savings provisions as appear to the Department to be necessary or expedient.

### **Further provision**

**30.**—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks necessary or expedient—

- (a) for the general purposes, or any particular purpose, of this Act; or
- (b) in consequence of any provision made by or under this Act, or for giving full effect to this Act or any such provision.

(2) An order under subsection (1) may apply (with or without modifications), amend or repeal any statutory provision passed or made before the passing of this Act.

(3) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with—

- (a) the coming into operation of any provision of this Act; or
- (b) any provision made by an order under subsection (1).

(4) The powers conferred by this section are not restricted by any other power conferred by this Act.

### **Interpretation**

**31.**—(1) In this Act—

“the Central Services Agency” means the Northern Ireland Central Services Agency for the Health and Social Services established under Article 26 of the Order of 1972;

“the Department” means the Department of Health, Social Services and Public Safety;

“the framework document” has the meaning given in section 5;

“the health and social care bodies” has the meaning given in section 1(5);

“Health and Social Services Board” means a body established under Article 16 of the Order of 1972;

“health care” has the meaning given in section 2(5);

“health inequalities” has the meaning given in section 2(5);

“HSC trust” means a Health and Social Care trust established under Article 10 of the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#);

“the Mental Health Commission” means the Mental Health Commission for Northern Ireland established under Part 6 of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);

“the Order of 1972” means the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#);

“prescribed” means prescribed by regulations;

“the Regional Agency” means the Regional Agency for Public Health and Social Well-being established under section 12;

“the Regional Board” means the Regional Health and Social Care Board established under section 7;

“RBSO” means the Regional Business Services Organisation established under section 14;

“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;

“regulations” means regulations made by the Department;

“social care” has the meaning given in section 2(5);

“special agency” means a special health and social care agency established under Article 3 of the [Health and Personal Social Services \(Special Agencies\) \(Northern Ireland\) Order 1990 \(NI 3\)](#);

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) [1954 \(c. 33\)](#).

(2) Other expressions used in this Act to which a meaning is given in Article 2(2), (3) or (4) of the Order of 1972 have the same meaning in this Act as in that Order.

### **Minor and consequential amendments**

**32.** The statutory provisions mentioned in Schedule 6 have effect subject to the minor and consequential amendments specified there.

### **Repeals**

**33.** The statutory provisions mentioned in the first column of Schedule 7 (which include provisions which are spent or no longer of any practical utility) are repealed to the extent specified in the second column of that Schedule.

### **Commencement**

**34.—(1)** The following provisions come into operation on Royal Assent—

- (a) section 23 and Schedule 5;
- (b) section 24(4) to (7);
- (c) section 26(3) to (6);
- (d) section 28 to 31;
- (e) this section; and
- (f) section 35.

(2) The following provisions come into operation on Royal Assent insofar as they confer power to make regulations or orders—

- (a) section 7(2) and Schedule 1;
- (b) section 9;
- (c) section 12(2) and Schedule 2;
- (d) section 14(2) and Schedule 3;
- (e) section 16(2) and Schedule 4;
- (f) section 17; and
- (g) section 18.

(3) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

**Short title**

**35.** This Act may be cited as the Health and Social Care (Reform) Act (Northern Ireland) 2009.