

## SCHEDULES

### SCHEDULE 1

Article 16(3).

#### THE HEALTH AND SOCIAL SERVICES BOARDS

### PART I

#### THE CONSTITUTION OF THE HEALTH AND SOCIAL SERVICES BOARDS

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

2. A Health and Social Services Board shall, notwithstanding that it is exercising functions on behalf of the Ministry or the Ministry of Home Affairs<sup>F1</sup>, be entitled to enforce any rights acquired and shall be liable in respect of any liabilities incurred (including liabilities in tort) in the exercise of those functions in all respects as if it were acting as a principal, and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health and Social Services Board in its own name.

**F1** functions transf. by SRO (NI) 1973/504

[<sup>F2</sup>3.—(1) A Health and Social Services Board shall consist of—

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

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

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

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

**F2** 1991 NI 1

**Status:** Point in time view as at 01/01/2006.

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[<sup>F3</sup>4.—(1) The term of office of members of a Health and Social Services Board appointed under paragraph 3(1)(a), (b) or (e) shall be four years or such other period as may be determined by the Head of the Department at the time the appointments are made.

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

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

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

**F3** 1991 NI 1

[<sup>F4</sup>5.—(1) A member of a Health and Social Services Board appointed under paragraph 3(1)(a) or (b)—

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

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

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

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

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

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

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

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

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

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

**F4** 1991 NI 1

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

## PART II

### SUPPLEMENTARY PROVISIONS AS TO THE HEALTH AND SOCIAL SERVICES BOARDS

#### Acquisition, etc., of land

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

#### Committees

*Sub#para. (1) rep. by 1986 NI 24*

(2) <sup>F5</sup> . . . <sup>F6</sup> . . . , a Health and Social Services Board may, subject to sub-paragraph (5), appoint one or more committees to which it may delegate such of its functions as it thinks fit.

(3) A committee appointed under this paragraph may include persons who are not members of the Health and Social Services Board<sup>F5</sup> . . . .

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

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

**F5** 1991 NI 1  
**F6** 1986 NI 24

#### **Modifications etc. (not altering text)**

**C1** Sch. 1 para. 8 applied (with modifications) (1.2.2007) by Health and Personal Social Services (Joint Committee for Commissioning) Order (Northern Ireland) 2007 (S.R. 2007/14), art. 7

#### Sub-committees

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

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

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

**Status:** Point in time view as at 01/01/2006.

**Changes to legislation:** Health and Personal Social Services (Northern Ireland) Order 1972 is up to date with all changes known to be in force on or before 24 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## Procedure

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

### Modifications etc. (not altering text)

**C2** Sch. 1 para. 10 applied (with modifications) (1.2.2007) by Health and Personal Social Services (Joint Committee for Commissioning) Order (Northern Ireland) 2007 (S.R. 2007/14), art. 7

### Disclosure of pecuniary, etc., interests and related provisions

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

- (a) in those sections any reference to a council were a reference to a Board or to a committee or sub-committee thereof, any reference to a councillor were a reference to a member of a Board or of a committee or sub-committee thereof, any reference to the clerk of the council were a reference to the chief<sup>F7</sup> . . . officer of the Health and Social Services Board and any reference to that Act were a reference to this Order;
- (b) in section 28(4) of that Act the words “or 46” were omitted and for the words from “by any local elector” onwards there were substituted the words “by any person.”.

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

**F7** 1991 NI 1

## Officers

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

(2) Regulations may make provision with respect to—

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

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

[<sup>F8</sup>(2A) Determinations or regulations under sub-paragraph (1) or (2) may provide for approvals or determinations to have effect from a date specified in them.

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

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<sup>F9</sup>(2C) Where the registration of a dental practitioner in the dentists register is suspended—

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

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

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

**F8** 1986 NI 24  
**F9** prosp. subst. by SI 2005/2011

The seal Execution of contracts and instruments not under seal

[<sup>F10</sup>**13.** The seal of a Health and Social Services Board shall be authenticated by the signatures of—

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

**F10** 1991 NI 1

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

[<sup>F11</sup>**15.** Regulations may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Health and Social Services Board is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.]

**F11** 1991 NI 1

*Schedule 2 rep. by 1986 NI 24*

**Status:** Point in time view as at 01/01/2006.

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## SCHEDULE 3

Article 26(2).

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

#### PART I

##### THE CONSTITUTION OF THE AGENCY

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

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

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

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

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

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

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

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

#### PART II

##### SUPPLEMENTARY PROVISIONS AS TO THE AGENCY

###### Acquisition, etc., of land

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

**Changes to legislation:** Health and Personal Social Services (Northern Ireland) Order 1972 is up to date with all changes known to be in force on or before 24 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## Committees

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

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

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

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

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

## Sub-committees

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

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

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

## Procedure

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

## Disclosure of pecuniary, etc., interests and related provisions

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

- (a) in those sections any reference to a council were a reference to the Agency or to a committee or sub-committee thereof, any reference to a councillor were a reference to a member of the Agency or of a committee or sub-committee thereof, any reference to the clerk of the council were a reference to the chief<sup>F12</sup> . . . officer of the Agency and any reference to that Act were a reference to this Order;
- (b) in section 28(4) of that Act the words “or 46” were omitted and for the words from “by any local elector” onwards there were substituted the words “by any person.”.

**F12** 1991 NI 1

**Status:** Point in time view as at 01/01/2006.

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## Officers

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

(2) Regulations may make provision with respect to—

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

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

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

## The seal

**12.** The seal of the Agency shall be authenticated by the signatures of at least one member of the Agency and of the person for the time being acting as chief<sup>F13</sup> . . . officer of the Agency.

**F13** 1991 NI 1

## Execution of contracts and instruments not under seal

**13.** Any contract or instrument which, if entered into or executed by an individual, would not require to be<sup>F14</sup> executed as a deed] may be entered into or executed on behalf of the Agency by any person generally or specifically authorised by the Agency to act for that purpose and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

**F14** 2005 NI 7

*Schedule 4 rep. by 1991 NI 1*

*Schedule 5 rep. by 1992 NI 20*



## SCHEDULE 6

Articles 37, 38(1)(b).

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

1. Where an officer, being a social worker, of<sup>F15</sup> the responsible authority]
  - (a) has reason to believe that, in the interests of any such person as is mentioned in Article 37<sup>F15</sup>. . . , or for preventing injury to the health of, or serious nuisance to, other persons, it is necessary to remove such person from the premises in which he is residing;
  - (b) consults with—
    - (i) the medical practitioner (if any) providing<sup>F16</sup> primary medical services] for such person under Part VI; and
    - (ii) a medical officer of the<sup>F15</sup> responsible authority designated by that authority] in that behalf; and
  - (c) after such consultation, obtains from such medical officer a certificate to the effect that such removal is necessary;

that officer shall certify accordingly in writing to the <sup>F17</sup>responsible authority and that authority may thereupon, after serving on the nearest known relative (if any) in Northern Ireland of such person three clear days' notice of its intention to do so, apply to the court of summary jurisdiction having jurisdiction in the petty sessions district where the premises are situated for an order under paragraph 2.]

**F15** 1994 NI 2

**F16** 2004 NI 2

**F17** 1994 NI 2

2.—(1) Subject to sub-paragraph (2), on any such application the court may, if satisfied on oral evidence of the allegations in the certificate, order the removal of the person to whom the application relates, by such officer of the<sup>F18</sup> responsible authority] as may be specified in the order, to a suitable hospital or other place in, or within convenient distance of, the area of that<sup>F18</sup> authority], and his detention and maintenance therein.

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

**F18** 1994 NI 2

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

4. An order under paragraph 2 may be varied by an order of the court so as to substitute for the place referred to in that paragraph such other suitable place in, or within convenient distance of, the area of the<sup>F19</sup> responsible authority] as the court may determine, so however that paragraph 2(2) shall apply, with the necessary modifications, to any proceedings under this paragraph.

**F19** 1994 NI 2

5. At any time after the expiration of six weeks from the making of an order under paragraph 2 or 3, an application may be made to the court by or on behalf of the person in respect of whom

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the order was made, and, on any such application, the court may, if in the circumstances it appears expedient to do so, revoke or vary the order.

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

- (a) where the application is for an order under paragraph 2 or 3, on the person in respect of whom the application is made;
- (b) where the application is for the revocation of such an order, on the officer of the<sup>F20</sup> responsible authority].

**F20** 1994 NI 2

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

8. Where the premises in which a person is maintained under this Schedule are premises which are neither hospital accommodation<sup>F21</sup> vested in the Department or an HSS trust] nor premises where accommodation is provided by, or by arrangement with, the Ministry under Article 15 or 36, the cost of his maintenance shall be borne by the<sup>F21</sup> responsible authority].

**F21** 1994 NI 2

9. Any expenditure incurred by the<sup>F22</sup> responsible authority] under paragraph 8 shall be recoverable by the<sup>F22</sup> authority] from the person maintained or from any person who, for the purposes of this Order, is liable to maintain that person; and any expenditure incurred by virtue of this Schedule in connection with the maintenance of a person in premises where accommodation is provided under Article 15 or 36 shall be recoverable in like manner as expenditure incurred in providing such accommodation.

**F22** 1994 NI 2

10. Any person who wilfully disobeys, or obstructs the execution of, an order under paragraph 2 or 3 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F23</sup> level 1 on the standard scale].

**F23** 1984 NI 3

11. In the exercise of its functions under this Schedule<sup>F24</sup> the responsible authority] shall act in accordance with regulations and directions.

**F24** 1994 NI 2

<sup>F25</sup>12. In this Schedule—

- (a) “responsible authority” means—

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

**F25** 1994 NI 2

## SCHEDULE 7

Article 48(3).

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

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

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- (b) in sub-paragraph (2) for the words from “clerk” to “directs” there shall be substituted the words “Ministry as correct, and shall publish”.
- 11. In paragraph 14(1) the words “in the prescribed form” shall be omitted.
- 12. In paragraph 15(1) for the words “in the prescribed form” there shall be substituted the words “in such form as may be approved by the Ministry”.
- 13. Paragraph 19 shall be omitted.
- 14. In paragraph 20, sub-paragraph (2) shall be omitted.

*Schedule 8 rep. by 2005 c. 12*

## SCHEDULE 9

Article 59.

### PROVISION FOR MAKING LOANS TO GENERAL MEDICAL PRACTITIONERS

1. The Ministry, with the approval of the Ministry of Finance, may by order empower the Health and Social Services Boards to make loans to practitioners providing<sup>F26</sup> primary medical services] for the purpose of enabling them—

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

**F26** 2004 NI 2

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

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

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

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4. Where it is shown to the satisfaction of the Ministry that, taking one year with another, the revenue of any Health and Social Services Board from loans so made is less than the expenditure properly chargeable to any revenue account of that Board in respect of loans so made, the Ministry may pay to that Board such sum not exceeding the amount of the deficiency as the Ministry thinks fit.

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

- (a) the principal of the loans which may be so guaranteed under the order shall not exceed in the aggregate<sup>[F27]</sup> £6,000,000];
- (b) there shall be charged on and issued out of the Consolidated Fund any sums required by the Ministry of Finance to fulfil any guarantees given by it under the order;
- (c) the Ministry of Finance may borrow money for the purpose of providing for issues out of the Consolidated Fund under sub-paragraph ( b);
- (d) the Health and Social Services Board shall make to the Ministry of Finance, at such times and in such manner as that Ministry may direct—
  - (i) payments of such amounts as that Ministry may direct in or towards repayment of any sums issued out of the Consolidated Fund under sub-paragraph ( b); and
  - (ii) payments of interest on what is outstanding in respect of sums so issued, at such rates as that Ministry may direct.

F27 1989 NI 7

## <sup>[F28]</sup>SCHEDULE 10

### PROHIBITION OF SALE OF MEDICAL PRACTICES

F28 2001 c. 3 (NI)

#### Sale of medical practices

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

- (a) provided<sup>[F29]</sup> primary medical services] under arrangements made with a Health and Social Services Board under this Order; or
- (b) provided or performed personal medical services in accordance with Article 15B arrangements made with a Health and Social Services Board.<sup>[F29]</sup> (prior to the coming into operation of Article 3 of the Primary Medical Services (Northern Ireland) Order 2004)]<sup>[F29]</sup> or]
- <sup>[F29]</sup>(c) provided or performed primary medical services in accordance with Article 15B arrangements, arrangements under Article 56B(2)(b) or under a general medical services contract—
  - (i) in prescribed circumstances, or
  - (ii) if regulations so provide, in all circumstances;]

**Status:** Point in time view as at 01/01/2006.

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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.

**F29** 2004 NI 2

### Prohibition, and certificate of Health and Social Services Board

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

(a) such amount as will in the court's opinion secure that he derive no benefit from the offence; and

(b) the further amount of £500;

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

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

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

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

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

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

(7) A prosecution for an offence under this paragraph shall only be instituted by or with the consent of the Director of Public Prosecutions, and the Health and Social Services Board shall, at the request of the Director, furnish him with a copy of any certificate issued by it under sub-paragraph (3), and with copies of any documents produced to it in connection with the application for that certificate.

### Certain transactions deemed sale of goodwill

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

(a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A's medical practice; and

- (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (2) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- (3) For the purposes of sub-paragraphs (1) and (2)—
  - (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions); and
  - (b) a person who procures the disposal of any premises is to be treated as having disposed of them.
- (4) Where in pursuance of any partnership agreement—
  - (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership;
  - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership; or
  - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,there shall be deemed for the purposes of paragraphs 1 and 2 to have been a sale of the goodwill of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of sub-paragraphs (1) and (2) to have been effected—
  - (i) in a case to which head (a) or head (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given; or
  - (ii) in a case to which head (c) applies, at the time when the agreement was made.
- (5) Sub-paragraph (6) applies if a person (“the assistant”)—
  - (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
  - (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and
  - (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.
- (6) For the purposes of paragraphs 1 and 2, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.
- (7) For the purposes of paragraphs 1 and 2, the goodwill of a medical practice shall be deemed to have been sold if—

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- (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<sup>[F30]</sup> or performed services as specified in paragraph 1(1) does not, by itself, make it unlawful under paragraph 1 for the goodwill of his practice to be sold.]

**F30** 2004 NI 2

### [F31]SCHEDULE 11

#### DISQUALIFICATION OF PERSONS PROVIDING PART VI SERVICES

**F31** 2001 c. 3 (NI)



## PART I

### THE TRIBUNAL

#### The Tribunal: general provisions

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

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

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

the Tribunal shall inquire into the case.

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

(4) Representations under this paragraph shall be made—

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

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

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

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

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

(8) A “list” means—

[<sup>F32</sup>(a)] [<sup>F32</sup>a list of health care professionals of a prescribed description performing primary medical services;]

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

prepared (in each case) under Part VI of this Order.

[<sup>F32</sup>(8A) In sub-paragraph (8)(a), “health care professional” has the same meaning as in Article 15C.]

(9) “Health scheme” means—

- (a) any of the health services under Article 4(a) or any corresponding statutory provision extending to Scotland or England and Wales; and
- (b) any prescribed scheme,

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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.

**F32** 2004 NI 2

#### The Tribunal: supplementary

2.—(1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

(2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

(3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if—

- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in paragraph 1(8) on the practitioner's behalf, meets that condition; and
- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within paragraph 1(7)(a) occurring in the course of the provision of those services on his behalf.

(4) The Tribunal is not required to inquire into a fraud case if it has previously inquired into representations in respect of the person concerned and the same acts or omissions.

(5) In a fraud case, regulations may make provision (including provision modifying the effect of Part VI of this Order and this Schedule) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

(6) For the purposes of this Schedule, in a fraud or efficiency case proceedings are finally concluded—

- (a) if the Tribunal determines not to disqualify, or conditionally disqualify, him, when it makes that determination;
- (b) if it determines to disqualify, or conditionally disqualify, him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
- (c) if it determines to disqualify, or conditionally disqualify, him and an appeal is brought against the determination, when the appeal process is exhausted.

(7) An inquiry under paragraph 1 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

#### Powers of the Tribunal

3.—(1) Sub-paragraph (2) applies where the Tribunal is of the opinion—

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- (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

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(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

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(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.

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- (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.

#### Modifications etc. (not altering text)

**C3** Sch. 11 para. 11: functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. **1(2)**, 6(a) (with art. 8(2))

#### 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.

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(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.

#### Modifications etc. (not altering text)

- C4 [Sch. 11 para. 15\(c\)-\(h\)](#): functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), [arts. 1\(2\), 6\(a\)](#) (with [art. 8\(2\)](#))

#### Chairman and deputy chairman

16. A person appointed as the chairman or a deputy chairman shall be either a barrister-at-law practising in Northern Ireland or a practising solicitor of the Supreme Court of not less than ten years' standing.

#### Other members of the Tribunal

17.—(1) Any appointment for the purposes of paragraph 15(c) shall be made after consultation with Health and Social Services Boards.



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(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.

**Modifications etc. (not altering text)**

**C5** Sch. 11 para. 17: functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), **arts. 1(2), 6(a)** (with art. 8(2))

Functions of the Tribunal

**18.**—(1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman;
- (b) a person appointed under paragraph 15(c); and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 15 as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) as it has effect in relation to the functions mentioned below, the reference to the person concerned is—

- (a) in the case of functions under paragraphs 1 to 4, to the person to whom the representations in question relate;
- (b) in the case of functions under paragraph 5, to the person whose disqualification, conditional disqualification or declaration of unfitness is under consideration;
- (c) in the case of functions under paragraph 9, to the person to whom the application in question relates; and
- (d) in the case of functions under paragraph 10, to the person in relation to whom paragraph 9(5) may be made to apply or continue to apply.

(3) In sub-paragraph (1)(c) as it has effect in relation to functions of the Tribunal conferred by or under any statutory provision relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.

(4) In the case of functions under paragraph 9 or 10, sub-paragraph (1) is subject to paragraph 11(2)(b).

Regulations

**19.** Regulations may provide for the appointment, tenure of office and vacation of office of members of the Tribunal.]

**Modifications etc. (not altering text)**

**C6** Sch. 11 para. 19: functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), **arts. 1(2), 6(a)** (with art. 8(2))

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## SCHEDULE 12

Article 66.

### FORMER DISPENSARY PROPERTY, ETC.

1. Where a medical practitioner was in occupation of any dispensary residence immediately before the 5th July 1948 and exercised his entitlement under the proviso to section 19(1)(a) of the Health Services Act (Northern Ireland) 1948 to continue to occupy such residence subject to such conditions as were determined pursuant to that proviso, and was, by virtue of that entitlement, in occupation of such residence immediately before the [<sup>F33</sup> 1st October 1973], he shall be entitled to continue in occupation of such residence so long as he continues to comply with those conditions.

**F33** 1972 NI 21

2. Notwithstanding anything in any transferred provision, or in any conveyance, trust deed or other instrument relating to that property, the Ministry may, subject to such conditions as it may determine, make available any property to which this Schedule applies (other than property which any person is entitled, pursuant to paragraph 1, to occupy) to any of the following persons—

- (a) medical practitioners, dental practitioners or pharmacists providing services under Part VI;
- (b) the Health and Social Services Boards for the purposes of any of their functions;
- (c) voluntary organisations providing services similar or related to those provided by the Ministry under this Order.

3. Where the Ministry is satisfied that any property to which this Schedule applies (other than property which any person is entitled, pursuant to paragraph 1, to occupy) is no longer required to be made available to the persons mentioned in paragraph 2, the Ministry may, notwithstanding anything in any transferred provision, or in any conveyance, trust deed or other instrument relating to that property, but subject to paragraphs 4 and 5 and to such conditions as it may determine, dispose of that property.

4. The Ministry shall, before disposing of any such property, notify the district council for the district within which the property is situated of its intention to do so.

5. If the district council which has been notified pursuant to paragraph 4, by resolution duly passed and communicated to the Ministry within three months of the council being so notified, requires the Ministry to do so, the Ministry shall by order transfer to that council all interests, rights or liabilities in, or relating to, that property to which the Ministry is entitled or subject immediately before the making of the order.

6. A district council to which the interests, rights or liabilities in any property are transferred under paragraph 5 may thereafter use that property for any of its functions or may dispose of that property.

7. Where, under paragraph 3 or 6, any property is disposed of by the Ministry or a district council, any proceeds of such disposal shall be paid to or, as the case may be, retained by the district council in whose district the property is situated.

8. Any district council by which any money is received under paragraph 7 in pursuance of a disposal shall apply that money towards the relief of rates.

## SCHEDULE 13

Article 76.

### INCIDENTAL, CONSEQUENTIAL, TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

1. An order under Article 76(1) may include provision—
  - (a) for the manner in which it is to be determined whether any assets or liabilities were held, acquired or incurred wholly or mainly for health or welfare purposes as mentioned in Article 75(1)( d)(ii);
  - (b) for the transfer of property to the Ministry where that property has undergone a change of use between 9th March 1972 and [<sup>F34</sup> 1st October 1973], otherwise than in the ordinary course of business;
  - (c) for exempting, either temporarily or otherwise, from the provisions of Article 75 any property, other assets or liabilities, for enabling the Ministry to use any property so exempted or for enabling a body assuming functions of a local authority to continue to use, on such terms and conditions as may be agreed, any property transferred under Article 75;
  - (d) for the determination of any question or disputes arising under Article 75 or under an order made under Article 76;
  - (e) for such of the assets (other than property) and liabilities specified in the order to be enforceable, notwithstanding Article 75, by or against such Health and Social Services Board as may be specified, [<sup>F35</sup> or the Agency];
  - (f) for temporary modifications of this Order or for modifying or repealing any other transferred provision passed or made before [<sup>F34</sup> 1st October 1973] (not including such a provision contained in this Order);
  - (g) in connection with the dissolution of the bodies mentioned in Article 74 and the winding-up of their affairs, including provision for securing that anything done by or to such a body should have effect as if done by or to a body established under this Order;
  - (h) for the carrying on and completion by or on behalf of the bodies mentioned in Article 74 of anything (including any legal or parliamentary proceeding) commenced by or on behalf of those bodies before [<sup>F34</sup> 1st October 1973];
  - (i) for construing, so far as may be necessary for the purposes of Article 74 or in consequence of an order made under Article 76(1), references in any transferred provision or in any judgement, decree, order or warrant of any court, or in any award, deed, contract or other document to any of the bodies mentioned in Article 74 as references to any other body;
  - (j) for the application, defrayal, apportionment or adjustment of assets, liabilities, income or costs, for the inclusion or exclusion for purposes of such application, defrayal, apportionment or adjustment of any item which the Ministry may think proper to include or exclude, and for the continuance of, or of functions of, any of the bodies mentioned in Article 74 and the continuance in office of any member or officer of that body, as if the body had not been dissolved, for purposes of such application, defrayal, apportionment or adjustment or for purposes of the making up and audit of accounts and any proceedings in connection therewith or consequent thereupon;
  - (k) for dealing with any applications, complaints or representations made to or by any body mentioned in Article 74 which are pending on [<sup>F34</sup> 1st October 1973];
  - (l) for the transfer of persons from lists of the Northern Ireland General Health Services Board to lists of Health and Social Services Boards or the removal of persons from such lists in

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pursuance of a direction made before [<sup>F34</sup> 1st October 1973] by the Tribunal within the meaning of the Health Services Act (Northern Ireland) 1971 .

**F34** 1972 NI 21

**F35** 1991 NI 1

2. Where an order makes provision as mentioned in paragraph 1(*f*) the order shall be subject to affirmative resolution.

#### SCHEDULE 14

Articles 79(2), 83(2).

##### ENDOWMENTS OF CERTAIN HOSPITALS

1. Any endowment to which this Schedule applies shall, notwithstanding anything contained in any enactment or rule of law, be applied and used by the Health and Social Services Board—

- (a) firstly, in the discharge, to the extent to which the endowment could, immediately before 5th July 1948, have been lawfully applied and used for that purpose, of so much of the liabilities transferred to the management committee under section 25(3), (4) and (7) of the Health Services Act (Northern Ireland) 1948 as may be prescribed;
- (b) secondly, subject to paragraph 2, for such the purposes to which it could, immediately before 5th July 1948, have been lawfully applied or used as the Health and Social Services Board may think proper.

2. Where the Health and Social Services Board is satisfied that it has become impracticable or unnecessary to apply and use the endowment in accordance with paragraph 1(*b*), that Board may, notwithstanding anything contained in the trusts upon which the endowment is held, apply and use the capital or income of the whole or any part of the endowment for such of the purposes connected with the hospital as it may think proper.

#### SCHEDULE 15

Articles 42(2), 98(2).

##### CHARGES IN RESPECT OF CERTAIN SERVICES, AND OTHER RELATED MATTERS

1. Regulations made with the approval of the Ministry of Finance may provide—

- (a) for the making and, subject to the provisions of paragraphs 3 and 4, the recovery, in such manner as may be prescribed, of—

[<sup>F36</sup>(i) such charges as may be prescribed in respect of such services (other than services provided as part of the general dental services) provided under this Order]<sup>F37</sup> or the 1991 Order] as may be prescribed;

- (ia) a charge of an amount calculated in accordance with paragraph 1A in respect of any services provided as part of the general dental services, not being—
  - (a) the repair of appliances other than prescribed appliances; or
  - (b) the arrest of bleeding;

- (iaa) charges of amounts calculated in accordance with paragraph 1A in respect of the supply under this Order of dentures and other dental appliances of prescribed descriptions;]
  - (ii) charges, other than charges under Article 61(2)( d)<sup>F38</sup> . . . in respect of the extra expense involved in the supply, at the request of the person supplied, of any appliance or vehicle which is of a more expensive type than that which would normally be supplied, or the replacement or repair of any such appliance, or, as the case may require, the replacement, repair or maintenance of any such vehicle; or
  - (iii) charges, other than charges under Article 61(2)( d)<sup>F38</sup> . . . in respect of the replacement of any appliance or vehicle supplied, the repair of any appliance supplied or the repair or maintenance of any vehicle supplied, if it is determined in the prescribed manner that the replacement, repair or maintenance, as the case may be, is necessitated by an act or omission of the person supplied or (if it occurred when he was under sixteen years of age) of his or of the person having charge of him when it occurred;
- (b) for the remission or repayment of<sup>F39</sup> such charges in respect of persons of such descriptions] as may be prescribed;
  - (c) for the grant, on payment of such sums as may be prescribed, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed.

**F36** 1988 NI 24  
**F37** 1991 NI 1  
**F38** 1984 NI 8  
**F39** 1988 NI 2

<sup>F40</sup>**1A.**—(1) Subject to the following provisions of this paragraph, regulations made with the approval of the Department of Finance and Personnel may make such provision as to the amount of any charge—

- (a) authorised by paragraph 1(a)(ia) for the provision of services; or
- (b) authorised by paragraph 1(a)(iaa) for the supply of dentures or other dental appliances, as appears to the Department to be appropriate.

(2) Without prejudice to the generality of sub#paragraph (1), regulations may provide that any charge which is so authorised in respect of appliances or services supplied or provided under Part VI—

- (a) shall be of an amount equal—
  - (i) to the practitioner's remuneration in respect of the supply or provision; or
  - (ii) to any part of that remuneration; or
- (b) shall be otherwise calculated by reference to that remuneration.

(3) Without prejudice to the generality of sub#paragraph (1), regulations may provide that any charge which is authorised in respect of appliances supplied otherwise than under Part VI—

- (a) shall be of an amount equal—
  - (i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or
  - (ii) to any part of such remuneration; or

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- (b) shall be otherwise calculated by reference to such remuneration.
- (4) The charge shall not exceed the amount which the Department considers to be the cost to health services of the supply or provision.
- (5) In this paragraph “cost to health services” does not include—
  - (a) any fee in respect of a visit by a practitioner to a patient;
  - (b) any fee in respect of the exceptional attendance by a practitioner at his surgery in order to provide emergency treatment; or
  - (c) any fee or part of a fee payable by a patient in pursuance of regulations under Article 61(2) (d) or (3).]

**F40** 1988 NI 24

[<sup>F41</sup>**1B.**—(1) Descriptions of persons may be prescribed for the purposes of paragraph 1(b) by reference to any criterion and, without prejudice to the generality of this sub#paragraph, by reference to any of the following criteria—

- (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any transferred provision or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
  - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (2) Regulations under this paragraph may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this sub#paragraph, may direct that they shall be calculated—
- (a) by a method set out in the regulations; or
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in a transferred provision other than this paragraph or by reference to such a method but subject to prescribed modifications; or
  - (c) by reference to an amount applicable for the purposes of a payment under a transferred provision; or
  - (d) by reference to the person's being or having been entitled to payment under a transferred provision.
- (3) Regulations under this paragraph which refer to a transferred provision may direct that the reference is to be construed as a reference to that provision—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.]

**F41** 1988 NI 2

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2. Regulations made under paragraph 1 may provide that sums which would otherwise be payable by the Health and Social Services Boards to persons by whom any services are provided are to be reduced by the amount of the charges prescribed in respect of those services.

[<sup>F42</sup>2A.—(1) The Department shall by regulations provide for payments to be made by the Department or by a Health and Social Services Board or the Agency to meet, or to contribute towards, the cost incurred (whether by way of charge under this Order or otherwise) for the supply of optical appliances for which a prescription has been given in consequence of a testing of sight under this Order—

- (a) for a child;
- (b) for a person whose resources fall to be treated under the regulations as being less than his requirements; or
- (c) for a person of such other description as may be prescribed

[<sup>F43</sup>or for which a prescription has been given for a person such as is mentioned in head (a), (b) or (c) in consequence of a testing of sight (not being a testing of sight under this Order) which took place in prescribed circumstances].

(2) In sub-paragraph (1), “child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education.

(3) In sub-paragraph (2), “qualifying full-time education” means full-time instruction—

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

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

[<sup>F43</sup>(4) The Department may by regulations—

- (a) provide for the Department or a Health and Social Services Board or the Agency to contribute to the cost of a testing of sight which the Department, the Board or the Agency accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
- (b) provide for payments to be made by the Department or a Health and Social Services Board or the Agency to meet, or to contribute towards, any costs accepted by the Department, the Board or the Agency as having been incurred (whether by way of charge under this Order or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of sight of a person of a prescribed description; and
- (c) direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this head, give any such direction as to how they are to be calculated as may be given by regulations under paragraph 1B(2).

(4A) Descriptions of person may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub#paragraph, by reference to any of the criteria specified in paragraph 1B(1).

(4B) Sub#paragraph (3) of paragraph 1B shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that paragraph.]]

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**F42** 1984 NI 8  
**F43** 1988 NI 24

3. Subject to paragraph 4, any charges under this Order shall, without prejudice to any other method of recovery, be a debt recoverable summarily.

4. Any person entitled to recover charges under this Order may, by agreement with the governing body of any association or fund established for the purpose of providing benefits to members or other beneficiaries thereof, accept from the association or fund, in respect of any charges payable under this Order by or in respect of any member or beneficiary of the association or fund, payment of such sums as may be provided by the agreement in lieu of recovering the whole or any part of such charges from, or from the estate of, such member or beneficiary or from any person liable therefor.

[<sup>F44</sup>5.—(1) Where goods or services are provided under this Order and either—

- (a) any charge payable by any person under this Order in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
- (b) any payment under this Order is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in sub-paragraph (2) is recoverable summarily as a debt from the person in question by the responsible authority.

(2) That amount—

- (a) in a case within sub-paragraph (1)(a), is the amount of the charge or (where it has been reduced) reduction;
- (b) in a case within sub-paragraph (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under paragraph 3 or this paragraph to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

(4) For the purposes of this paragraph, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this paragraph and paragraph 6, “responsible authority” means—

- (a) in relation to the recovery of any charge under paragraph 3 in respect of the provision of goods or services under this Order, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this paragraph of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;
- (c) in a case within sub-paragraph (1)(b), the person who made the payment.

(6) But the Department may by directions provide for—

- (a) the functions of any responsible authority of recovering any charges under this Order in respect of the provision of goods or services under this Order;



(b) the functions of any responsible authority under this paragraph and paragraph 6, to be exercised on behalf of the authority by another health services body.]

**F44** 2001 c. 3 (NI)

**6.—(1)** Regulations may provide that, where a person fails to pay—

- (a) any amount recoverable from him under paragraph 3 in respect of the provision of goods or services under this Order; or
- (b) any amount recoverable from him under paragraph 5,

a notice (referred to in this paragraph as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this paragraph as a penalty charge) of an amount determined in accordance with the regulations.

(2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

- (a) £100;
- (b) the amount referred to in sub-paragraph (1)(a) or (b) multiplied by 5.

(3) The Department may by order provide for sub-paragraph (2) to have effect as if, for the sum specified in head (a) or the multiplier specified in head (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.

(4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(5) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(6) Any sum payable under the regulations (including the amount referred to in sub-paragraph (1) (a) or (b)) may be recovered by the responsible authority summarily as a debt.

(7) But a person is not liable by virtue of a penalty notice—

- (a) to pay at any time so much of any amount referred to in sub-paragraph (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) No order shall be made under sub-paragraph (3) unless a draft has been laid before, and approved by resolution of the Assembly.

**7.—(1)** A person is guilty of an offence if he does any act mentioned in paragraph (2) with a view to securing for himself or another—

- (a) the evasion of the whole or part of any charge under this Order in respect of the provision of goods or services under this Order;
- (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment;
- (c) a payment under this Order (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in sub-paragraph (1) are—

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- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation; or
  - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this paragraph before a magistrates' court if he is authorised to do so by the Department.
- (5) Proceedings for an offence under this paragraph may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge;
  - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of sub-paragraph (5), a certificate purporting to be signed by or on behalf of the Department as to the date on which such evidence as is mentioned in head (a) of that sub-paragraph came to its knowledge is conclusive evidence of that date.
- (7) Where, in respect of any charge or payment under this Order—
- (a) a person is convicted of an offence under this paragraph; or
  - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under paragraph 6,
- he shall not, in a case within head (a), be liable to pay any such penalty charge or further sum by way of penalty or, in a case within head (b), be convicted of such an offence.
- (8) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

**9.** Without prejudice to any other provision of this Schedule, it shall be lawful for the Ministry<sup>[F45]</sup> or an HSS trust<sup>[F45]</sup> to require any person, for whom the Ministry<sup>[F45]</sup> or the HSS trust<sup>[F45]</sup> is providing services under this Order<sup>[F45]</sup> or the 1991 Order<sup>[F45]</sup> as an in-patient in hospital and who is absent during the day from the hospital where he is a patient for the purpose of engaging in employment for which he is remunerated, to pay such part of the cost of his maintenance in the hospital, and any costs incidental thereto, as may seem to the Ministry<sup>[F45]</sup> or the HSS trust<sup>[F45]</sup> to be reasonable having regard to the amount of the remuneration, and the provisions of this Schedule with respect to the recovery of charges shall apply to the recovery of any payment so required.

**F45** 1991 NI 1

**10.** Nothing in Article 98(1) shall operate to restrict the making of provision under this Schedule for the making and recovery of charges or payments in respect of any accommodation or services provided under this Order<sup>[F46]</sup> or the 1991 Order<sup>[F46]</sup>.

**F46** 1991 NI 1

[<sup>F47</sup>SCHEDULE 15A

DENTAL CHARGING: EXEMPTIONS

**F47** Sch. 15A inserted (prosp.) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2), ss. 4(3), 18(2)(a)

*General exemptions*

1.—(1) No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of a relevant dental service provided for any person who at the prescribed time—

- (a) was under the age of 18;
- (b) was under the age of 19 and receiving qualifying full-time education;
- (c) was pregnant; or
- (d) had given birth to a child within the previous 12 months.

(2) In sub-paragraph (1)(b), “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the person or body making the regulations.

(3) For the purposes of sub-paragraph (2)—

- (a) “recognised educational establishment” means an establishment recognised by the Department as being, or as comparable to, a school, college or university; and
- (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

(4) In sub-paragraph (1)(d), “child” includes a still-born child (within the meaning of the Births and Deaths Registration (Northern Ireland) Order 1976).

(5) This paragraph is subject to paragraph 3.

*Repair and replacement*

2.—(1) No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of the repair or replacement of any appliance.

(2) This paragraph is subject to paragraph 3.

*Exceptions to paragraphs 1 and 2*

3 Paragraphs 1 and 2 do not apply in relation to—

- (a) the repair or replacement of any appliance of a prescribed description; or
- (b) the repair or replacement of any appliance where it is determined in the prescribed manner—
  - (i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied; or

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- (ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

#### *Hospital patients*

**4** No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of any appliance supplied to a patient for the time being resident in a hospital.

**5** Paragraph 4 does not apply where an appliance is supplied—

- (a) under Article 60A(2);
- (b) under a general dental services contract; or
- (c) in accordance with Article 15B arrangements.

#### *Arrest of bleeding*

**6** No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of the arrest of bleeding.

#### *Declarations and evidence*

**7** Regulations may provide, with respect to any exemption under this Schedule, that it is to be a condition of the exemption that—

- (a) a declaration of the prescribed kind is made in the prescribed form and manner; or
- (b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.]

### *Schedule 16—Amendments*

## SCHEDULE 17

Article 109(2).

### SAVING, TEMPORARY AND TRANSITIONAL PROVISIONS

#### Exempted hospitals

**1.—(1)** The repeal by this Order of paragraph 2(1) of Schedule 11 to the Health Services Act (Northern Ireland) 1971 shall not, except to such extent as may be provided for under subparagraph (2) of this paragraph, affect the status, as an exempted hospital, of any hospital in respect of which an order was made under section 23(8) of the Health Services Act (Northern Ireland) 1948 .

(2) Notwithstanding the repeal by this Order of paragraph 2(2) of Schedule 11 to that Act of 1971, arrangements may be made with the governing body of the hospital to which an order under section 23(8) of that Act of 1948 related for the hospital to be treated as a hospital for the purposes of all or any of the provisions of this Order.

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#### Recovery of certain loans

2. The repeal by this Order of paragraph 2 of Schedule 11 to the Health Services Act (Northern Ireland) 1971 shall not affect the liability of any person to repay any amount due, or which may become due, under a loan made under section 6 of the Health Services Act (Northern Ireland) 1958, or affect the terms and conditions of a loan so made.

#### Saving for allowances, pensions, gratuities and compensation

3. The repeal of any enactment by this Order or by any enactment repealed by this Order shall not affect any allowances, pension or gratuity granted under, or any right to compensation accrued or accruing by virtue of, any such enactment before the repeal of that enactment became effective.

#### Special provisions as to certain property

4. The Belfast City Council may exercise the power conferred on the Lord Mayor, Aldermen and Citizens of the City of Belfast by section 24(1) of and Schedule 3 to, the Health Services Act (Northern Ireland) 1948 and may do so notwithstanding the repeal of section 75 of the Health Services Act (Northern Ireland) 1971.

#### Temporary provision as to compensation

5.—(1) Where—

- (a) in accordance with any enactment mentioned in sub-paragraph (4), compensation has been awarded to any officer in respect of his removal from or relinquishment of office;
- (b) that officer subsequently becomes entitled (whether by virtue of any enactment or otherwise) to a superannuation allowance in respect of any office which he has accepted after the date of such removal or relinquishment; and
- (c) in the calculation of the amount of such allowance, account has been taken of any period of service in respect of which such compensation is payable;

then, except as provided in sub-paragraph (3), such compensation—

- (i) shall cease to be payable if it does not exceed such part of the superannuation allowance as is attributable solely to that period of service;
- (ii) shall, if it exceeds such part so attributable, be reduced by an amount equal to that part.

(2) If a person receiving compensation under any enactment mentioned in sub-paragraph (4)—

- (a) obtains any office under any local or public body; or
- (b) receives, by virtue of this Order or of anything done in pursuance of this Order, any increase in the remuneration of the office held by him at the date at which the compensation was assessed;

then, except as provided in sub-paragraph (3), he shall not, so long as he holds that office or receives that increased remuneration, be entitled to receive, by way of compensation in respect of the office for which compensation is awarded, any greater sum than would make up the amount (if any) by which the remuneration which he is receiving falls short of the remuneration of the office in respect of which compensation was awarded.

(3) The Ministry may, on the application of the person concerned or of the body by which the compensation is payable, direct that the operation of sub-paragraph (1) or, as the case may be, sub-paragraph (2), in relation to that person, shall be modified so far as is, in the opinion of the Ministry, necessary in order equitably to meet the circumstances of the case.

(4) The enactments referred to in sub-paragraphs (1)(a) and (2) are—

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- (a) Schedule 3 to the Public Health (Tuberculosis) Act (Northern Ireland) 1946 , both as originally enacted and as applied by section 2 of the Health Services Act (Northern Ireland) 1958 ; and
  - (b) Schedule 6 to the Health Services Act (Northern Ireland) 1948 .
- (5) If a person receiving compensation under Schedule 4 to the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946
- (a) obtains any office under the Crown or under any local or other public authority; or
  - (b) receives, by virtue of this Order or of anything done in pursuance of or in consequence of this Order, any increase of the emoluments of that office held by him;

then he shall not, while receiving the emoluments of that office, receive any greater amount of compensation (if any) than with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds that office.

- (6) In this paragraph—
- (a) in sub-paragraph (2)( a), “local or public body” includes any authority or body specified in paragraph 1 of Schedule 1 to the<sup>F48</sup> Financial Provisions (Northern Ireland) Order 1983 as an authority or body to whom government loans may be made];
  - (b) in sub-paragraph (5), “local authority” and “emoluments” have the same meanings as in section 29 of and paragraph 17 of Schedule 4 to, the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland) 1946 and “local authority” also includes a district council or a joint committee of district councils.

**F48** 1983 NI 1

*Para. 6 rep. by 1978 NI 15*

Saving for powers of Ministry of Development<sup>F49</sup> to dispose of former workhouse property

**F49** SRO (NI) 1973/504; 1976 NI 16

7.—(1) The repeal of paragraph 1 of Schedule 3 to the Welfare Services Act (Northern Ireland) 1971 shall not affect any power of the Ministry of Development<sup>F50</sup> to dispose of, in accordance with the provisions of section 3 of the Welfare Services Act (Northern Ireland) 1949 , any former workhouse property still held by that Ministry at the commencement of this Order.

(2) In this paragraph, “former workhouse property” means any land (not being property which was subject to the provisions of section 23(2) or (3A) of the Health Services Act (Northern Ireland) 1948 ) which was, immediately before the 20th January 1949, held by the Ministry of Health and Local Government under any of the provisions of the Poor Relief Acts (Northern Ireland) 1838 to 1937.

**F50** SRO (NI) 1973/504; 1976 NI 16

#### Care of patients under Part III of Mental Health Act

8. Where immediately before [<sup>F51</sup> 1st October, 1973] a hospital order or a guardianship order made under Part III of the Mental Health Act is in force by virtue of which a person is committed to

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the care of the Northern Ireland Hospitals Authority or the guardianship of a management committee the order shall have effect on and after [<sup>F51</sup> 1st October, 1973] as if it committed him to the care of the Ministry or, as the case may be, the guardianship of a Health and Social Services Board.

**F51** 1972 NI 21

*Para. 9. rep. by 1995 NI 2*

Saving for sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954

**10.** Nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

*Schedule 18—Repeals*

**Status:**

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