
STATUTORY INSTRUMENTS

1978 No. 1907 (N.I. 26)

NORTHERN IRELAND

**The Health and Personal Social Services
(Northern Ireland) Order 1978**

Laid before Parliament in draft

Made 20th December 1978

Coming into Operation 21st January 1979

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SCHEDULES:

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At the Court at Buckingham Palace, the 20th day of December 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Title and commencement

1. This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1978 and shall come into operation on the expiration of one month from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of Health and Social Services;

“the principal Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 (c).

PART II

SALE OF TOBACCO, ETC. TO PERSONS APPARENTLY UNDER 16

Prohibition on sale of tobacco, etc. to persons apparently under 16

3.—(1) Subject to paragraph (2), a person who sells to a person apparently under the age of 16 any tobacco or cigarette papers, whether for his own use or not, shall be guilty of an offence.

(a) 1974 c. 28.

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

(c) S.I. 1972/1265 (N.I. 14).

(2) A person shall not be guilty of an offence under paragraph (1) in respect of any sale of tobacco (except cigarettes) if he did not know and had no reason to believe that the tobacco was for the use of the person to whom it was sold.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding £50.

Control of automatic machines for sale of tobacco

4.—(1) If on complaint being made under Part IX of the Magistrates' Courts Act (Northern Ireland) 1964 (a) the court is satisfied that any automatic machine for the sale of tobacco kept on any premises is being extensively used by persons apparently under the age of 16, the court may order the owner of the machine or the person on whose premises the machine is kept—

(a) to take such precautions to prevent the machine being so used as may be specified in the order;

(b) if necessary, to remove the machine, within such time as may be specified in the order.

(2) A person who fails to comply with an order made under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50 and to a further fine not exceeding £10 for each day during which the offence continues.

Seizure of tobacco, etc. in possession of persons apparently under 16

5.—(1) A member of the Royal Ulster Constabulary or Royal Ulster Constabulary Reserve may seize any tobacco or cigarette papers in the possession of any person apparently under the age of 16 whom he finds smoking in any street or public place.

(2) Any tobacco or cigarette papers seized under paragraph (1) shall be disposed of in such manner as the Police Authority for Northern Ireland may direct.

Exemption for persons employed in trade

6. Nothing in this Part shall—

(a) make it an offence to sell tobacco or cigarette papers to, or

(b) authorise the seizure of tobacco or cigarette papers in the possession of, any person who is at the time employed by a manufacturer of, or dealer in, tobacco, either wholesale or retail, for the purposes of his business.

Interpretation

7. In this Part—

“cigarettes” includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking;

“public place” includes any place to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

“street” includes any road, lane, alley or passage, whether a thoroughfare or not;

“tobacco” includes cigars, cigarettes and tobacco substitutes.

(a) 1964 c. 21 (N.I.).

PART III

VOCATIONAL TRAINING FOR MEDICAL PRACTITIONERS

Requirement of suitable experience

8.—(1) Where the Department so prescribes, a Health and Social Services Board shall not arrange under Article 56 of the principal Order with a medical practitioner for him to provide general medical services for persons in its area unless he is suitably experienced.

(2) For the purposes of this Part a medical practitioner is “suitably experienced”, if he either—

(a) has acquired the prescribed medical experience, or

(b) is by virtue of regulations made under this Article exempt from the need to have acquired that experience.

(3) For the purposes of this Article regulations may provide—

(a) for prescribing the medical experience needed to satisfy paragraph (2) (a);

(b) as to the documents which a medical practitioner may or must produce as evidence that he is suitably experienced or has acquired medical experience of any particular kind;

(c) for requiring a medical practitioner who claims to have acquired the prescribed experience to submit particulars of his experience to a prescribed body, and for requiring that body, if satisfied that he has acquired the prescribed experience, to issue him a certificate (a “certificate of prescribed experience”) to that effect;

(d) for enabling a medical practitioner without the prescribed experience who considers that the medical experience which he has acquired is, or ought to be regarded as, equivalent to the prescribed experience, to submit particulars of that experience to a prescribed body, and for requiring or enabling that body, if satisfied that the medical experience acquired is so equivalent, to issue to him a certificate (a “certificate of equivalent experience”) to that effect;

(e) for treating a medical practitioner who holds a certificate of equivalent experience as satisfying paragraph (2) (a);

(f) as to the circumstances or the conditions in or subject to which a medical practitioner is exempt from the need to have acquired the prescribed experience;

(g) for conferring on a medical practitioner who is refused a certificate of prescribed experience or a certificate of equivalent experience a right of appeal to a body constituted by the Department and for any matter for which it appears to the Department to be requisite or expedient to provide in consequence of the conferring of that right;

(h) for anything authorised or required by this Article to be prescribed or otherwise provided for by regulations.

(4) Regulations under this Article shall be framed so as to allow the prescribed experience to be acquired without undertaking full-time employment.

(5) Before making any regulations under this Article the Department shall consult such organisations as appear to the Department to be representative of the medical profession.

(6) Regulations under this Article shall be subject to negative resolution.

- (7) In this Article—
“medical experience” includes hospital experience in any specialty, and
“the prescribed medical experience” means the medical experience for the
time being prescribed for the purposes of paragraph (2) (a).

PART IV

AMENDMENTS TO THE PRINCIPAL ORDER

Definitions in the principal Order

9. In Article 2 (2) of the principal Order—
(a) in the definition of “home for persons in need” paragraph (a) is repealed;
(b) after the definition of “medical practitioner” there shall be inserted the
following definition—
““medicine” includes such chemical reagents as are included in a list
for the time being approved by the Department for the purposes
of Article 63;”.

Alteration of period for which determination of charges for private resident patients is made

- 10.—(1) In Article 31 (3) of the principal Order for the word “April” there
shall be substituted the word “May”.
(2) A determination under Article 31 (3) of that Order in respect of a period
of twelve months which has not expired before the commencement of this
Article shall continue in force for a further month after the date on which it
would otherwise have expired.

Accommodation for persons in need by voluntary organisations

- 11.—(1) The Department may make arrangements with any voluntary
organisation managing any premises for the provision of accommodation in
lieu or in supplementation of the provision of accommodation by the Depart-
ment under Article 15 of the principal Order.
(2) Accordingly, in Article 36 (1) of the principal Order after sub-para-
graph (b) there shall be inserted—
“(c) a voluntary organisation managing any premises;”.

Family planning services

12. In Article 56 of the principal Order (arrangements for general medical
services) after paragraph (3) there shall be inserted—
“(3A) Regulations under paragraph (2) may, without prejudice to
Article 12, provide for general medical services to include the provision of,
and services connected with, any such advice, examination and treatment
as are mentioned in that Article.”.

Determination of remuneration for general dental, ophthalmic and pharmaceutical services

13. In Articles 61 (2) (e), 62 (2) (f) and 63 (2) (c) of the principal Order, after
the word “for” there shall be inserted the words “the determination of”.

Provision of drugs, medicines and appliances

14. In Article 63 of the principal Order—

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

“(1) Every Health and Social Services Board shall, in accordance with regulations, make arrangements in respect of its area for the supply to persons who are in that area of—

(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions—

(i) in providing any service in pursuance of this Order; or

(ii) in the health services established in pursuance of section 1 of the National Health Service Act 1977 (a) or section 1 of the National Health Service (Scotland) Act 1978 (b); or

(iii) in the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and

(b) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of such functions;

and the services provided in accordance with the arrangements are in this Order referred to as “pharmaceutical services”.”;

(b) in paragraph (2) for the words “prescribed” and “approved” there shall be substituted the word “listed”;

(c) for paragraph (4) there shall be substituted—

“(4) In this Article “listed” means included in a list for the time being approved for the purposes of this Article by the Department.”.

Construction of reference to “hospital” in will, etc.

15.—(1) For the purpose of giving effect to the provisions of any will, deed or other like instrument a reference therein to any hospital or other unit managed by a Health and Social Services Board shall be construed as a reference to the appropriate Health and Social Services Board.

(2) Accordingly, in Article 85 (2) of the principal Order, after the words “welfare authority” there shall be inserted the words “or a hospital or other unit managed by a Health and Social Services Board”.

PART V

MISCELLANEOUS

Fee for registration of nursing homes

16. In section 1 (2) of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971 (c) for the words “a fee of £0.25” there shall be substituted the words “such fee as may be prescribed”.

Transfer of certain functions relating to mental health

17.—(1) The functions immediately before the commencement of this Order of the Minister for the Civil Service or the Treasury under the Mental Health Act (Northern Ireland) 1961 (d) except in so far as they arise under or in relation to section 76 or Part III of that Act are hereby transferred to the Department of Finance.

(a) 1977 c. 49.

(b) 1978 c. 29.

(c) 1971 c. 32 (N.I.).

(d) 1961 c. 15 (N.I.).

(2) The functions immediately before the commencement of this Order of the Minister for the Civil Service or the Treasury under or in relation to section 76 of the Mental Health Act (Northern Ireland) 1961 are hereby transferred to the Department of the Civil Service.

(3) Section 71 (application of the Act to private hospitals) and section 112 (3) (regulations and rules under the Act) of the Mental Health Act (Northern Ireland) 1961 shall have effect as if Article 8 of the Northern Ireland (Modification of Enactments—No. 1) Order 1973 (a) (Parliamentary control of certain statutory rules) did not apply to that Act.

Definition of “local authority” in Solicitors (Northern Ireland) Order 1976

18. In Article 3 (2) of the Solicitors (Northern Ireland) Order 1976 (b) in the definition of “local authority”, after the words “Education and Libraries (Northern Ireland) Order 1972 or” there shall be inserted the words “the Northern Ireland Central Services Agency for the Health and Social Services or”.

Minor and consequential amendments and repeals

19.—(1) The enactments specified in Schedule 1 shall have effect subject to the minor and consequential amendments there specified.

(2) The enactments specified in Schedule 2 which include certain provisions which are spent are hereby repealed to the extent specified in the third column of that Schedule.

N. E. Leigh,
Clerk of the Privy Council.

(a) S.I. 1973/2163.

(b) S.I. 1976/582 (N.I. 12).

SCHEDULES

Article 19 (1).

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

The Mental Health Act (Northern Ireland) 1961 (c. 15)

1. In section 76 (2), for the words “Ministry of Finance” there shall be substituted the words “Department of the Civil Service”.

2. In section 112, for subsection (2) there shall be substituted the following subsection—

“(2) Regulations under subsection (1) for the purposes of section 2 (2) or 90 shall be subject to the consent of the Department of Finance.”.

The Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))

3. In Article 56 (2) (d) after the words “sub-paragraph (a)” there shall be inserted the words “and who has such medical experience as may be prescribed under Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1978 unless he is exempted by regulations under that Article from the need to have acquired that experience”.

4. In Article 85 (2) the words “coming into operation on or after 1st October 1973” shall be omitted.

5. In Article 105 (6) for the words “the foregoing provisions of this Article” there shall be substituted the words “paragraph (1)”.

6. In Schedule 16, the word “from” in paragraph 24 (a) shall be omitted and paragraph 24 (a) shall be deemed never to have applied to the words after “and regulations made thereunder” in section 1 (1) of the Mental Health Act (Northern Ireland) 1961 which shall be construed accordingly.

SCHEDULE 2

Article 19 (2).

REPEALS

Chapter or Number	Short Title	Extent of repeal
1961 c. 15.	The Mental Health Act (Northern Ireland) 1961.	Section 97.
S.I. 1972/1265 (N.I. 14).	The Health and Personal Social Services (Northern Ireland) Order.	<p>In Article 2 (2) in the definition of "home for persons in need", paragraph (a).</p> <p>In Article 60 the words "and compensation for the loss of right to sell".</p> <p>In Article 85 (2) the words "coming into operation on or after 1st October 1973".</p> <p>In Article 105, in paragraph (1) the words "Subject to paragraph (2)," and paragraphs (2) to (5).</p> <p>In Schedule 10, paragraph 3.</p> <p>In Schedule 16, in paragraph 24 (a), the word "from".</p>
S.I. 1972/1998 (N.I. 21).	The Local Government (Postponement of Elections and Reorganisation) (Northern Ireland) Order 1972.	In Schedule 1, in Part I, in the entry relating to the Health and Personal Social Services (Northern Ireland) Order 1972, the words "and 85 (2)".

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order—

- (a) makes it an offence to sell tobacco to persons who are apparently under the age of 16 and empowers the police to seize tobacco in the possession of such persons if they are smoking in a street or public place;
- (b) gives the Department of Health and Social Services power to prescribe the medical experience which a medical practitioner must have before he can be included on the lists of medical practitioners providing general medical services prepared by the Health and Social Services Boards;
- (c) makes certain detailed amendments to the Health and Personal Social Services (Northern Ireland) Order 1972 and other legislation dealing with health matters.

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