

STATUTORY INSTRUMENTS

1991 No. 194

**The Health and Personal Social
Services (Northern Ireland) Order 1991**

Provision of goods and services

Health and ^{F1}social care] contracts

8.—(1) The bodies mentioned in sub-paragraphs (a) to (e) of paragraph (2) may, for the purpose of carrying out their functions and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

- (a) one another; or
- (b) any of the bodies or persons mentioned in sub-paragraphs (f) to (j) of that paragraph.

(2) The bodies and persons referred to in paragraph (1) are—

^{F2}[^{F3}(a)

- (aa) the Regional Agency;
- (b) RBSO;]
- (c) special agencies;
- (d) [^{F4}Health and Social Care trusts];
- (e) the Department;

Sub#para. (f) rep. by 2001 c. 3 (NI)

(g) any of the following within the meaning of the National Health Service Act 1977^{F5}

^{F6}(i)

^{F7}(ii)

(iii) NHS trusts;

Head (iv) rep. by 2001 c. 3 (NI)

(v) the Dental Practice Board;

^{F8}(vi)

[^{F9}(ga) [^{F10}NHS England];

[^{F11}(gb) integrated care boards established under Chapter A3 of Part 2 of the National Health Service Act 2006;]

- (gc) Special Health Authorities established under section 28 of that Act;
- (gd) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;
- (ge) Local Health Boards established under section 11 of that Act;
- (gf) NHS trusts established under section 18 of that Act;]
- (h) any of the following within the meaning of the National Health Service (Scotland) Act 1978^{F12}

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(i) Health Boards;

[^{F13}(ia) Special Health Boards;]

(ii) the Common Services Agency for the Scottish Health Service;

(iii) the Scottish Dental Practice Board;

(iv) NHS trusts;

Head (v) rep. by 2001 c. 3 (NI)

[^{F14}(ha) Healthcare Improvement Scotland,]

^{F15}(i)

[^{F16}(ia) the National Institute for Health and Care Excellence;

^{F17}(ib)]

(j) the Secretaries of State respectively concerned with health in England, in Wales and in Scotland.

[^{F18}(2A) The bodies mentioned in paragraph (2) may be referred to as “ [^{F19}health care] bodies”.]

(3) An arrangement falling within paragraph (1) shall be known as a health and [^{F1}social care] contract and is referred to in this Order as an “ [^{F20}HSC contract]”.

(4) Whether or not an arrangement which constitutes an [^{F20}HSC contract] would, apart from this paragraph, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Department for determination under the following provisions of this Article.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an [^{F20}HSC contract], it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangement cannot be agreed,

that party may refer the terms of the proposed arrangement to the Department for determination under the following provisions of this Article.

(6) Where a reference is made to the Department under paragraph (4) or (5), the Department may determine the matter itself or, if the Department considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

(7) In the determination of a reference under paragraph (5), the Department or, as the case may be, the person appointed under paragraph (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(8) A determination of a reference under paragraph (4) may contain such directions (including directions as to payment) as the Department or, as the case may be, the person appointed under paragraph (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the [^{F20}HSC contract] in question to comply with any such directions.

(9) Without prejudice to the generality of the powers exercisable on a reference under paragraph (4), the Department or, as the case may be, the person appointed under paragraph (6) may in a determination in relation to an arrangement constituting an [^{F20}HSC contract] vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

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- (a) subject to sub-paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and
- (b) directions included in the determination by virtue of paragraph (8) may contain such provisions as the Department or, as the case may be, the person appointed under paragraph (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

[^{F21}(9A) The references in paragraphs (6) to (9) to a “person” include a body prescribed for the purposes of those paragraphs.

(9B) The Department may by regulations establish a body for those purposes; and such regulations may make provision—

- (a) as to the members of the body, including the terms and conditions of their appointment;
- (b) for the payment of fees and allowances to members of the body.]

(10) Where a body or person mentioned in [^{F22}any of sub-paragraphs (g) to (gf), (h), (ha), (ia), (ib) and (j) of paragraph (2)] is a party or prospective party to an arrangement or proposed arrangement which—

- (a) falls within paragraph (1); and
- (b) also falls within the definition of NHS contract in section 4 of the National Health Service and Community Care Act 1990^{F23} or section 17A of the National Health Service (Scotland) Act 1978^{F24},

paragraphs (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Department of references to the Department and the Secretary of State acting jointly.

- F1** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F2** Art. 8(2)(a) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 139\(a\)](#); S.R. 2022/102, art. 2(b)
- F3** Art. 8(2)(a)(aa)(b) substituted (1.4.2009) for art. 8(2)(a)(b) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 13\(5\)](#); S.R. 2009/114, **art. 2**
- F4** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(c\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F5** 1977 c. 49
- F6** Art. 8(2)(g)(i) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 43\(2\)\(a\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F7** Art. 8(2)(g)(ii) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 43\(2\)\(a\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F8** Art. 8(2)(g)(vi) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 7 para. 25](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F9** Art. 8(2)(ga)-(gf) inserted (1.2.2013 for specified purposes (except insofar as it inserts sub-paragraph (gf))) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 43\(2\)\(b\)](#); S.I. 2012/2657, art. 2(4)
- F10** Words in Order substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\), reg. 1\(1\), Sch. para. 1](#)
- F11** Art. 8(2)(gb) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\), regs. 1\(2\), 4\(2\)](#)
- F12** 1978 c. 29
- F13** Art. 8(2)(h)(ia) inserted (1.2.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 43\(2\)\(c\)](#); S.I. 2012/2657, art. 2(4)

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- F14** Art. 8(2)(ha) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(d)**; S.I. 2012/2657, art. 2(4)
- F15** Art. 8(2)(i) omitted (1.2.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(e)**; S.I. 2012/2657, art. 2(4)
- F16** Art. 8(2)(ia)(ib) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(f)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F17** Art. 8(2)(ib) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 23** (with reg. 3)
- F18** 1997 NI 7
- F19** Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(b)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F20** Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F21** Art. 8(9A)(9B) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 139(b)**; S.R. 2022/102, art. 2(b)
- F22** Words in art. 8(10) substituted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(3)**; S.I. 2012/2657, art. 2(4) (with art. 14)
- F23** 1990 c. 19
- F24** 1978 c. 29

Modifications etc. (not altering text)

- C1** Art. 8 power to modify conferred by Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), art. 61E(3)(4) (as substituted (prosp.) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2), **ss. 2(2), 18(2)(a)**)
- C2** Art. 8 temp. modification (1.2.2013 until 1.4.2013) by The Health and Social Care Act 2012 (Commencement No. 3, Transitional, Savings and Transitory Provisions and Amendment) Order 2012 (S.I. 2012/2657), **art. 14**; S.I. 2013/160, **art. 2(2)** (the temp. modification end date of 1.4.2013 does not apply to (S.I. 2012/2657), art. 14(c))

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Changes and effects yet to be applied to :

- art. 8(2)(g)(iii) omitted by [2012 c. 7 Sch. 21 para. 43\(2\)\(a\)\(iii\)](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 5(11(1) words omitted by [2022 c. 3 \(N.I.\) Sch. 1 para. 149](#)