
STATUTORY INSTRUMENTS

1991 No. 194

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

Introductory

Title and commencement

1.—(1) This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1991.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint^{F1}.

(3) The following provisions shall come into operation on 1st April 1991, namely—

- (a) this Article;
- (b) Articles 2, 3, 4, 6, 29(1)(a) and (b), 30, 32 and 33;
- (c) Schedule 1;
- (d) Part I of Schedule 5 and Article 34 so far as it relates to that Part;
- (e) Part I of Schedule 6 and Article 35 so far as it relates to that Part.

(4) An order under paragraph (2) may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Head of the Department necessary or expedient in connection with the provisions brought into operation.

F1 fully exercised SRs 1991/131, 1992/196, 1993/162

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F2} 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—

“goods” includes accommodation;

“the principal Order” means the Health and Personal Social Services (Northern Ireland) Order 1972^{F3};

[^{F4}“provide” includes manage;]

^{F5} ...

“services” includes services of any description, whether or not being services under the principal Order.

(3) Article 2(2) [^{F6}and (2A)] of the principal Order (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

F2 1954 c. 33 (NI)

Changes to legislation: *The Health and Personal Social Services (Northern Ireland) Order 1991 is up to date with all changes known to be in force on or before 16 April 2024. 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) View outstanding changes*

- F3** 1972 NI 14
- F4** 2001 c. 3 (NI)
- F5** Words in art. 2(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 137**; S.R. 2022/102, art. 2(b)
- F6** Words in art. 2(3) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(2)**; S.R. 2009/114, **art. 2**

Health and [^{F7} social care] bodies

- F7** 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**

Constitution of Health and Social Services Boards

3. ^{F8}

- F8** Art. 3 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), **Sch. 6 para. 13(3)**, **Sch. 7**; S.R. 2009/114, **art. 2**

Health and Social Services Councils

4. ^{F9}

- F9** Art. 4 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), **Sch. 6 para. 13(3)**, **Sch. 7**; S.R. 2009/114, **art. 2**

Art. 5 rep. by 2001 c. 3 (NI)

Abolition of Northern Ireland Health and Social Services Training Council

6. ^{F10}

- F10** Art. 6 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

Removal of Crown immunities

7.—(1) ^{F11}

(2) In Schedule 2—

(a) Part I has effect to continue certain exemptions for [^{F12}health and social care body to which this Article applies] and property held, used or occupied by such bodies; ^{F13} . . .

(b) ^{F13}

(3) Where, as a result of the provisions of paragraph (1), by virtue of his employment during any period after the day appointed for the coming into operation of that paragraph—

(a) an employee has contractual rights against a [^{F14}health and social care body to which this Article applies] to benefits in the event of his redundancy, and

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- (b) he also has statutory rights against the [F14]health and social care body to which this Article applies] under[F15 Part XII of the Employment Rights (Northern Ireland) Order 1996] (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in sub-paragraph (a) shall be taken as satisfying his entitlement to benefits under the said[F15 Part].

(4) Nothing in paragraph (1) affects the extent of the expression “the services of the Crown” where it appears in—

- (a) Schedule 1 to the Registered Designs Act 1949^{F16} (provisions as to the use of registered designs for the services of the Crown etc.); and
- (b) sections 55 to 59 of the Patents Act 1977^{F17} (use of patented inventions for services of the Crown);

and, accordingly, services provided in pursuance of any power or duty of the Department under Part II or V of the principal Order [F18or the 2009 Act] shall continue to be regarded as included in that expression, whether the services are in fact provided by a [F19]health and social care body to which this Article applies], an [F20]HSC trust] or any other person.

(5) The Department may by order made subject to affirmative resolution provide that, in relation to any provision contained in a local Act and specified in the order, the operation of paragraph (1) shall be excluded or modified to the extent specified in the order.

[F21(6) This Article applies to the following health and social care bodies—

- ^{F22}(a)
- (b) the Regional Agency;
- (c) RBSO;
- (d) a special agency.]

<p>F11 Art. 7(1) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(a), Sch. 7; S.R. 2009/114, art. 2</p> <p>F12 Words in art. 7(2) 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. 13(4)(b); S.R. 2009/114, art. 2</p> <p>F13 Art. 7(2)(b) and preceding word repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(c), Sch. 7; S.R. 2009/114, art. 2</p> <p>F14 Words in art. 7(3) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(b); S.R. 2009/114, art. 2</p> <p>F15 1996 NI 16</p> <p>F16 1949 c. 88</p> <p>F17 1977 c. 37</p> <p>F18 Words in art. 7(4) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(d); S.R. 2009/114, art. 2</p> <p>F19 Words in art. 7(4) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(b); S.R. 2009/114, art. 2</p> <p>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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2</p> <p>F21 Art. 7(6) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(e); S.R. 2009/114, art. 2</p> <p>F22 Art. 7(6)(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. 138; S.R. 2022/102, art. 2(b)</p>

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Provision of goods and services

Health and ^{F23}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—

^{F24} ^{F25}(a)

- (aa) the Regional Agency;
- (b) RBSO;]
- (c) special agencies;
- (d) ^{F26}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^{F27}

^{F28}(i)

^{F29}(ii)

(iii) NHS trusts;
Head (iv) rep. by 2001 c. 3 (NI)

(v) the Dental Practice Board;

^{F30}(vi)

^{F31}(ga) ^{F32}NHS England];

^{F33}(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^{F34}

(i) Health Boards;

^{F35}(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)*

^{F36}(ha) Healthcare Improvement Scotland,]

^{F37}(i)

^{F38}(ia) the National Institute for Health and Care Excellence;

^{F39}(ib)]

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

^{F40}(2A) The bodies mentioned in paragraph (2) may be referred to as “^{F41}health care] bodies”.]

(3) An arrangement falling within paragraph (1) shall be known as a health and ^{F23}social care] contract and is referred to in this Order as an “^{F42}HSC contract]”.

(4) Whether or not an arrangement which constitutes an ^{F42}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 ^{F42}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 ^{F42}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 ^{F42}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—

(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.

^{F43}(9A) The references in paragraphs (6) to (9) to a “person” include a body prescribed for the purposes of those paragraphs.

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(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 [F44 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^{F45} or section 17A of the National Health Service (Scotland) Act 1978^{F46},

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.

- F23** 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](#)
- F24** [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\(b\)](#)
- F25** [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](#)
- F26** 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](#)
- F27** 1977 c. 49
- F28** [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)
- F29** [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)
- F30** [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)
- F31** [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\(4\)](#)
- F32** 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](#)
- F33** [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\(2\)](#)
- F34** 1978 c. 29
- F35** [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\(4\)](#)
- F36** [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\(4\)](#)
- F37** [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\(4\)](#)
- F38** [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)
- F39** [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)
- F40** 1997 NI 7

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- F41** 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**
- F42** 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**
- F43** 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)
- F44** 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)
- F45** 1990 c. 19
- F46** 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))

[^{F47}Provision of certain services under [^{F48}HSC contracts]

8A.—(1) This Article applies to any arrangement under which [^{F49}the Department] or such other [^{F50}health care] body as may be prescribed arranges for the provision to it—

- (a) by a person on an ophthalmic list, or
- (b) by a person on a pharmaceutical list,

of goods or services that it reasonably requires for the purposes of functions which it is exercising under Part II of the principal Order.

(2) Any such arrangement is to be treated as an [^{F51}HSC contract] for the purposes of Article 8 (other than paragraphs (5) and (7)).

(3) In this Article—

“ophthalmic list” means a list published in accordance with regulations made under—

- (a) Article 62(2)(a) of the principal Order;
- (b) section 39(a) of the National Health Service Act 1977; or
- (c) section 26(2)(a) of the National Health Service (Scotland) Act 1978;

“pharmaceutical list” means a list published in accordance with regulations made under—

- (a) Article 63(2A)(a) of the principal Order;
- (b) section 42(2)(a) of the National Health Service Act 1977; or
- (c) section 27(2) of the National Health Service (Scotland) Act 1978.]

F47 1997 NI 7

F48 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)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

F49 Words in art. 8A(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 140**; S.R. 2022/102, art. 2(b)

F50 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**

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F51 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**

Primary and other functions of Health and Social Services Boards and special agencies

9. ^{F52}

F52 **Art. 9** repealed (1.4.2009) by **Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(6), Sch. 7; S.R. 2009/114, art. 2**

[^{F53}Health and Social Care trusts]

F53 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**

[^{F54}Health and Social Care trusts]

10.—^{F55}(1) Subject to paragraph (2), the Department may by order establish bodies, to be known as [^{F54}Health and Social Care trusts] (in this Order referred to as [^{F56}HSC trusts])—

- (a) to provide goods and services for the purposes of the health and [^{F57}social care]; ^{F58}...
- ^{F59}(b) to exercise social care and children functions (see Article 10A); or
- (c) to exercise, on behalf of the Department, such functions as the Department may direct under Article 10B.]

^{F60}(2) Before making an order under paragraph (1), the Department shall consult—

- (a) the Patient and Client Council, and
- (b) such other persons and bodies as the Department considers appropriate.]]

(3) In ^{F61}...Articles 11 to 13 and Schedule 3 “a relevant body” means—

^{F62}^{F63}(a)

- (aa) the Regional Agency;
- (b) RBSO; or]
- (c) a special agency.

(4) Every [^{F64}HSC trust]—

- (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Department and, subject to paragraph 5(2) of Schedule 3, executive and non-executive directors (that is to say, directors who, subject to paragraph (6), respectively are and are not employees of the trust);
- (b) shall have the functions conferred on it by an order under paragraph (1) and by Schedule 3; and
- (c) shall be a body to which section 19 of the Interpretation Act (Northern Ireland) 1954^{F65} applies.

^{F55}(5) The functions which may be specified in an order under paragraph (1) include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.]

[^{F66}(5A) The functions of an [^{F64}HSC trust] also include power to provide services in accordance with arrangements made under Article 15B of the principal Order, and to do so as a member of a qualifying body (within the meaning of Article 15C of that Order).]

- (6) The Department may by regulations make general provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an [^{F64}HSC trust] (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
 - (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
 - (c) the maximum and minimum numbers of the directors;
 - (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;
 - (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
 - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board);

and, without prejudice to the generality of the power, any such regulations may make provision to deal with cases where the post of any officer of an [^{F64}HSC trust] 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.

(7) Part I of Schedule 3 shall have effect with respect to orders under paragraph (1); Part II of that Schedule shall have effect, subject to paragraph (8), with respect to the general duties and the powers and status of [^{F56}HSC trusts]; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of [^{F56}HSC trusts].

- [^{F55}(8) A power conferred by paragraph 14 or 15 of Part II of Schedule 3 may only be exercised—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the [^{F64}HSC trust] of its functions or of its obligations under [^{F67}HSC contracts]; and
 - (b) in circumstances specified in directions under paragraph 6 of that Schedule, with the consent of the Department.]

(9) The Department may by order confer on [^{F56}HSC trusts] specific powers additional to those contained in paragraphs 10 to 15 of Schedule 3.

F54 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**

F55 2001 c. 3 (NI)

F56 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

F57 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**

F58 Word in art. 10(1) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), **Sch. 1 para. 141(2)(a)**; S.R. 2022/102, art. 2(b)

F59 Art. 10(1)(b)(c) substituted for art. 10(1)(b) (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), **Sch. 1 para. 141(2)(b)**; S.R. 2022/102, art. 2(b)

F60 Art. 10(2) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(7)(a)**; S.R. 2009/114, **art. 2**

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- F61** Words in art. 10(3) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 141(3)(a)**; S.R. 2022/102, art. 2(b)
- F62** Art. 10(3)(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. 141(3)(b)**; S.R. 2022/102, art. 2(b)
- F63** Art. 10(3)(a)(aa)(b) substituted (1.4.2009) for art. 10(3)(a)(b) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(7)(b)**; S.R. 2009/114, **art. 2**
- F64** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F65** 1954 c. 33 (NI)
- F66** 1997 NI 7
- F67** 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)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Modifications etc. (not altering text)

- C3** Art. 10 referred to (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), **ss. 1(3), 34(3)**; S.R. 2009/114, **art. 2**

[^{F68}Definition of social care and children functions”

10A.—(1) In Article 10 and Schedule 3 “social care and children functions” means the following functions (so far as they are exercisable by HSC trusts under the provisions conferring them)—

- (a) functions under sections 35 and 96 of the Children and Young Persons Act (Northern Ireland) 1968;
- (b) functions under Articles 15, 36, 37, 38, 39, 99, 101 and 101A of, and Schedule 6 to, the Health and Personal Social Services (Northern Ireland) Order 1972;
- (c) functions under sections 1(2), 2 and 12(1) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978;
- (d) functions under the Mental Health (Northern Ireland) Order 1986;
- (e) functions under the Adoption (Northern Ireland) Order 1987;
- (f) functions under sections 4 to 9 of the Disabled Persons (Northern Ireland) Act 1989;
- (g) functions under the Children (Northern Ireland) Order 1995;
- (h) the function of making or submitting pre-sentence reports within the meaning of Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 or Article 4(1) of the Criminal Justice (Northern Ireland) Order 2008;
- (i) functions under the Carers and Direct Payments Act (Northern Ireland) 2002;
- (j) functions under the Mental Capacity Act (Northern Ireland) 2016.

(2) The Department may by regulations amend the list of social care and children functions set out in paragraph (1).]

- F68** Art. 10A inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 142**; S.R. 2022/102, art. 2(b)

[^{F69}Certain functions of the Department to be exercisable on its behalf by HSC trusts

10B.—(1) The Department may by direction provide for specified functions of the Department to be exercisable, in relation to the operational area of a specified HSC trust, by that trust on behalf of the Department.

(2) In this Article—

“delegation direction” means a direction under paragraph (1);

“specified” means specified in a delegation direction.

(3) A delegation direction comes into operation on such date as may be specified.

(4) A delegation direction may contain such transitional provisions as the Department thinks appropriate, including in particular provisions—

(a) for specified acts done by or in relation to the Department or an HSC trust at any time before the direction comes into operation to have effect after that time for specified purposes as if done by or in relation to the other of them;

(b) for any reference to the Department or an HSC trust in any statutory provision, statutory document (within the meaning of section 1(e) of the Interpretation Act (Northern Ireland) 1954) or order or direction of a court to have effect for specified purposes as a reference to the other of them;

and any such transitional provisions have effect, for those purposes, in relation to such acts, statutory provisions, statutory documents, orders or directions.

(5) An HSC trust is—

(a) entitled to enforce any rights acquired in the exercise of any delegated functions, and

(b) liable in respect of any liabilities incurred (including any liabilities in tort) in the exercise of any delegated functions,

in all respects as if it were acting as a principal; and all proceedings for the enforcement of such rights or liabilities are to be brought by or against the trust in its own name.

(6) In paragraph (5) “delegated functions” means functions exercised by the trust by virtue of a delegation direction.

(7) References in any other statutory provision to functions of an HSC trust include references to functions exercisable by an HSC trust on behalf of the Department by virtue of a delegation direction.

(8) The Department may by regulations make such amendments to any statutory provision as appear to the Department to be necessary or expedient to facilitate, or to be otherwise consequential on, the exercise by HSC trusts of functions of the Department by virtue of delegation directions.]

F69 Art. 10B inserted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 143](#); S.R. 2022/102, art. 2(b)

Transfer of staff to [^{F70}HSC trusts]

11.—(1) Subject to paragraph (5), this Article applies to any person who, immediately before an [^{F70}HSC trust's] operational date—

(a) is employed by a relevant body to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or

(b) is employed by a relevant body to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this Article by a scheme made by the relevant body specified as mentioned in paragraph 3(1)(f) of Schedule 3.

(2) A scheme under this Article shall not have effect unless approved by the Department.

(3) Subject to Article 12, the contract of employment between a person to whom this Article applies and the relevant body by which he is employed shall have effect from the operational date as if originally made between him and the [^{F71}HSC trust].

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- (4) Without prejudice to paragraph (3)—
- (a) all the relevant body's rights, powers, duties and liabilities under or in connection with a contract to which that paragraph applies shall by virtue of this Article be transferred to the [F71HSC trust] on its operational date; and
 - (b) anything done before that date by or in relation to the relevant body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the [F71HSC trust].
- (5) In any case where—
- (a) an order under Article 10(1) provides for the establishment of an [F71HSC trust] with effect from a date earlier than the operational date of the trust, and
 - (b) on or after that earlier date but before its operational date the [F71HSC trust] makes an offer of employment by the trust to a person who at that time is employed by a relevant body to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust, and
 - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the [F71HSC trust],

paragraphs (3) and (4) shall have effect in relation to that person's contract of employment as if he were a person to whom this Article applies and any reference in those paragraphs to the operational date of the trust were a reference to the date on which he takes up employment with the trust.

(6) Paragraphs (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this Article.

(7) A scheme under this Article may designate a person either individually or as a member of a class or description of employees.

- F70** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F71** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

Supplementary provisions as to transfer of staff

12.—(1) In the case of a person who falls within Article 11(1)(b), a scheme under that Article may provide that, with effect from the [F72HSC trust's] operational date, his contract of employment (in this Article referred to as “his original contract”) shall be treated in accordance with the scheme as divided so as to constitute—

- (a) a contract of employment with the [F73HSC trust]; and
 - (b) a contract of employment with the relevant body by which he was employed before that date.
- (2) Where a scheme makes provision as mentioned in paragraph (1),—
- (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that paragraph, when taken together, are not less favourable than the benefits under his original contract;
 - (b) Article 11 shall apply in relation to the contract referred to in paragraph (1)(a) as if it were a contract transferred under that Article from the relevant body mentioned in paragraph (1) (b) to the [F73HSC trust];

- (c) so far as necessary to preserve any rights and obligations, the contract referred to in paragraph (1)(b) shall be regarded as a continuation of the employee's original contract; and

Sub#para. (d) rep. by 1996 NI 16

Para. (3) rep. by 1996 NI 16

(4) Where, as a result of the provisions of Article 11, by virtue of his employment during any period after the operational date of the [F73HSC trust],—

- (a) an employee has contractual rights against an [F73HSC trust] to benefits in the event of his redundancy, and
- (b) he also has statutory rights against the trust under[F74 Part XII of the Employment Rights (Northern Ireland) Order 1996] (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in sub-paragraph (a) shall be taken as satisfying his entitlement to benefits under the said[F74 Part].

- F72** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F73** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F74** 1996 NI 16

Transfer of assets and liabilities to [F75HSC trusts]

13.—(1) The Department may by order transfer or provide for the transfer to an [F76HSC trust], with effect from such date as may be specified in the order, of such of the assets and liabilities of the Department or of a relevant body as, in the Department's opinion, need to be transferred to the trust for the purpose of enabling it to carry out its functions.

(2) An order under this Article may create or impose such new rights or liabilities in respect of what is transferred or what is retained by the Department or a relevant body as appear to the Department to be necessary or expedient.

(3) Nothing in this Article affects the power of the Department or any power of a relevant body to transfer assets or liabilities to an [F76HSC trust] otherwise than under paragraph (1).

(4) Stamp duty shall not be chargeable in respect of any transfer to an [F76HSC trust] effected by or by virtue of an order under this Article.

(5) Where an order under this Article provides for the transfer—

- (a) of land held on lease from a third party, or
- (b) of any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer shall be binding on the third party notwithstanding that, apart from this paragraph, it would have required his consent or concurrence.

(6) Any assets and liabilities which are to be transferred to an [F76HSC trust] shall be identified by agreement between the trust and a relevant body or, in default of agreement, by direction of the Department.

(7) Where, for the purpose of a transfer pursuant to an order under this Article, it becomes necessary to apportion any assets or liabilities, the order may contain such provisions as appear to the Department to be appropriate for the purpose; and where any such assets fall within paragraph (5), the order shall contain such provisions as appear to the Department to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

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(8) In the case of any transfer made by or pursuant to an order under this Article, a certificate issued by the Department that any asset or liability specified in the certificate is vested in the [F76HSC trust] specified in the order shall be conclusive evidence of that fact for all purposes.

(9) An order under this Article may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

(10) In this Article “third person” means a person other than the Department or a relevant body.

- F75** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F76** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

Originating capital debt of, and other financial provisions relating to, [F77HSC trusts]

14.—(1) Each [F78HSC trust] shall have an [F79 originating capital] of an amount specified in an order made by the Department, being an amount representing, subject to paragraph (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.

(2) In determining the [F79 originating capital] of an [F78HSC trust], there shall be left out of account such assets or, as the case may be, liabilities as are, or are of a class, determined for the purposes of this Article by the Department.

(3) An [F77HSC trust's] [F79 originating capital] shall be deemed to have been issued out of moneys appropriated by Measure and shall constitute an asset of the Consolidated Fund.

[F79(4) An [F77HSC trust's] originating capital shall be public dividend capital.]
Paras. (5), (6) rep. by 2001 c. 3 (NI)

(7) The Department may determine^{F79}

- [F79(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Order;
- (b) the amount of any such public dividend capital which is to be repaid at any time;
- (c) any other terms on which any public dividend capital is so issued or treated as issued.]

(8) An order under paragraph (1) and a determination under paragraph (2)^{F79} . . . or (7) shall be made with the consent of the Department of Finance and Personnel.

(9) Schedule 4 shall have effect with respect to—

- (a) borrowing by [F77HSC trusts];
- (b) the limits on their indebtedness;
- (c) the payment of additional public dividend capital to them; and
- (d) the application of any surplus funds of [F77HSC trusts].

- F77** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F78** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F79** 2001 c. 3 (NI)

Financial obligations of [F80HSC trusts]

15.—(1) Every [F81HSC trust] shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) It shall be the duty of every [F81HSC trust] to achieve such financial objectives as may from time to time be set by the Department with the consent of the Department of Finance and Personnel and as are applicable to it; and any such objectives may be made applicable to [F80HSC trusts] generally, or to a particular [F81HSC trust] or to [F80HSC trusts] of a particular description.

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| <p>F80 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2</p> <p>F81 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2</p> |
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Trust funds and trustees for [F82HSC trusts]

16.—(1) The Department may by order provide for the appointment of trustees for an [F83HSC trust]; and any trustees so appointed shall have power to accept, hold and administer any property on trust for the general or any specific purposes of the [F83HSC trust] (including the purposes of any specific hospital or other establishment or facility[F84 at or from which services are provided] by the trust).

- (2) An order under paragraph (1) may—
- (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment;
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Department);
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Department after consultation with such persons as it considers appropriate; and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where, under paragraph (1), trustees have been appointed for an [F83HSC trust]—
- (a) the Department may by order transfer or provide for the transfer of endowments or other property held on trust from the [F83HSC trust] to the trustees so appointed; and
 - (b) an order under Article 13 may transfer or provide for the transfer of endowments or other property held on trust by a Health and Social Services Board to the trustees for an [F83HSC trust] and, accordingly, in relation to such endowments or other property, references in Article 13 to an [F83HSC trust] shall be construed as including references to the trustees for that trust.
- (4) Paragraphs (4), (5) and (8) of Article 13 apply, with appropriate modifications, in relation to an order under paragraph (3)(a) as they apply in relation to an order under that Article.
- (5) Subject to paragraphs (6) to (8) and to any provision made by an order under Article 13, the transfer under Article 13 or paragraph (3)(a) of any property held on trust shall not affect the trusts on which the property is held.
- (6) Any discretion given by a trust instrument to the trustees of property transferred under Article 13 or paragraph (3)(a) shall be exercisable by the body to which or persons to whom the property is so transferred.

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(7) Where—

- (a) Schedule 14 to the principal Order applies to an endowment held by a Health and Social Services Board; and
- (b) that endowment is transferred—
 - (i) to an [F83HSC trust] or the trustees for an [F83HSC trust] under Article 13; or
 - (ii) to the trustees for an [F83HSC trust] under paragraph (3)(a), having previously been transferred to the [F83HSC trust] under Article 13,

the said Schedule 14 shall apply to the use of that endowment by the [F83HSC trust] or, as the case may be, the trustees for the [F83HSC trust] as it applied to the use thereof by the Health and Social Services Board.

(8) Where—

- (a) Article 81 of the principal Order applies to any property held by a Health and Social Services Board; and
- (b) that property is transferred—
 - (i) to an [F83HSC trust] or the trustees for an [F83HSC trust] under Article 13; or
 - (ii) to the trustees for an [F83HSC trust] under paragraph (3)(a), having previously been transferred to the [F83HSC trust] under Article 13,

the said Article 81 shall apply to the administration of that property by the [F83HSC trust] or, as the case may be, the trustees for the [F83HSC trust] as it applied to the administration thereof by the Health and Social Services Board.

(9) References in this Article—

- (a) to property include references to the rights and liabilities arising from property;
- (b) to endowments and property held on trust include references to the income and accumulated income thereof.

F82	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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2
F83	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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2
F84	2001 c. 3 (NI)

Fund-holding practices

Arts. 17#20 rep. by 2001 c. 3 (NI)

Indicative amounts

Indicative amounts for doctors' practices

21.—(1) Subject to [F85 paragraphs (2) and (8)], for each financial year, [F86 the Department] shall, by notice given to each practice F87 . . . , specify an amount of money (in this Order referred to as an “indicative amount”) representing the basic price of the drugs, medicines and listed appliances which, in the opinion of [F88 the Department] , it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice.

Para. (2) rep. by 2001 c. 3 (NI)

(3) For the purposes of this Article, a “practice” means—

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- [^{F89}(a) a person or body who has entered into a contract under Article 57 of the principal Order, otherwise than in partnership; or
- (b) two or more individuals practising in partnership who together have entered into such a contract;]

and any reference to the members of a practice shall be construed accordingly.

(4) The members of a practice shall seek to secure that, except with the consent of [^{F90}the Department] or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial year does not exceed the indicative amount notified to the practice for that year under paragraph (1).

(5) For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it under paragraph (1) for any financial year, [^{F91}the Department] shall set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice.

(6) For the purposes of this Article, regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines or listed appliances.

(7) ^{F92}

(8) In this Article “listed” has the same meaning as in Article 63 of the principal Order.

(8A) ^{F92}

[^{F85}(9) This Article does not apply in relation to the performance or provision of personal medical services in accordance with arrangements made under Article 15B of the principal Order.]

F85	1997 NI 7
F86	Words in art. 21(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 144(2)(a) ; S.R. 2022/102, art. 2(b)
F87	Words in art. 21(1) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(8)(a), Sch. 7 ; S.R. 2009/114, art. 2
F88	Words in art. 21(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 144(2)(b) ; S.R. 2022/102, art. 2(b)
F89	2004 NI 2
F90	Words in art. 21(4) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 144(3) ; S.R. 2022/102, art. 2(b)
F91	Words in art. 21(5) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 144(4) ; S.R. 2022/102, art. 2(b)
F92	Art. 21(7)(8A) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(8)(c), Sch. 7 ; S.R. 2009/114, art. 2

Financial provisions

Art. 22 rep. by 2003 NI 5

Power of [^{F93}the Regional Agency] , special agencies and [^{F94}HSC trusts] to raise funds by appeals, collections, etc.

23.—(1) The Department may by regulations confer power on [^{F95}the Regional Board, ^{F96}...], special agencies and [^{F94}HSC trusts] (in this Article referred to as “relevant bodies”) to engage in activities to which this Article applies, but before making any regulations under this Article the Department shall consult the relevant bodies and such other bodies as the Department thinks fit.

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(2) This Article applies to activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the relevant bodies in providing or improving any services or any facilities or accommodation which is or are or is or are to be provided as part of the health and [F97social care] or to assist the relevant bodies in connection with their functions with respect to research, including, subject to paragraph (3),—

- (a) public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities; and
- (b) activities involving the use of land, premises or other property held by or for the benefit of the relevant bodies, subject however to any restriction on the purposes for which trust property may be used.

(3) Regulations under this Article may provide that this Article shall not apply to activities of a prescribed description.

(4) Subject to paragraphs (5) to (8), the relevant body at whose instance property is given in pursuance of this Article shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for the purpose for which it was given.

(5) Where property is given in pursuance of this Article on trust for any purposes of an [F98HSC trust] for which trustees have been appointed under Article 16(1), then, if those trustees and the [F98HSC trust] agree, the property may be held, administered and applied by those trustees instead of by the [F98HSC trust]; and references in paragraphs (6) to (8) to a relevant body accordingly include references to trustees for an [F98HSC trust].

(6) Where property held by a relevant body under this Article is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the relevant body as the relevant body thinks fit.

(7) Where property held by a relevant body under this Article is insufficient to enable the purpose for which it was given to be fulfilled then—

- (a) the relevant body may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purposes for which the trust property may be applied, and in the case of money paid or payable by the Department under Article 87(1) of the principal Order, to any directions it may give; but
- (b) where the capital or income applicable under sub-paragraph (a) is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the relevant body shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the relevant body as the relevant body thinks fit.

(8) Where under paragraph (6) or (7) property becomes applicable for purposes other than that for which it was given, the relevant body shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

F93 Words in art. 23 heading substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 145\(3\)](#); S.R. 2022/102, art. 2(b)

F94 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

F95 Words in art. 23(1) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 13\(9\)](#); S.R. 2009/114, [art. 2](#)

F96 Words in art. 23(1) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 145\(2\)](#); S.R. 2022/102, art. 2(b)

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- F97** 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](#)
- F98** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

Schemes for meeting losses and liabilities, etc., of certain health and [^{F99}social care] bodies

24.—(1) The Department may by regulations made with the consent of the Department of Finance and Personnel establish a scheme whereby any of the bodies mentioned in paragraph (2) may make provision to meet—

- (a) expenses arising from any loss of or damage to their property; and
- (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies concerned.

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

^{F100}(a)

- (aa) the Regional Agency;
- (b) RBSO;
- (c) special agencies; and
- (d) [^{F101}HSC trusts];

but a scheme under this Article may limit the class or description of bodies which are eligible to participate in it.

(3) Without prejudice to the generality of the power conferred by paragraph (1), a scheme under this Article may—

- (a) provide for the scheme to be administered by the Department or by a body specified in the scheme (being a body mentioned in paragraph (2));
- (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
- (c) provide for the making of payments for the purposes of the scheme by the Department.

(4) Without prejudice to any other power of direction conferred on the Department,—

- (a) if the Department so directs, a body which is eligible to participate in a scheme shall do so; and
- (b) where a scheme provides for it to be administered by the Department, a body mentioned in paragraph (2) shall carry out such functions in connection with the administration of the scheme by the Department as the Department may direct.

[^{F102}(5) A person or body administering a scheme under this Article does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under the scheme.]

- F99** 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](#)
- F100** Art. 24(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. 146](#); S.R. 2022/102, [art. 2\(b\)](#)
- F101** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F102** SI 2001/3649

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Provision of accommodation

Arrangements by Department for provision of accommodation by voluntary organisations, etc.

25. For Article 36 of the principal Order there shall be substituted the following Article—

“Provision of accommodation in premises maintained by voluntary organisations, etc.

36.—(1) Subject to paragraph (2) and Article 36A, arrangements made by the Department under Article 15 may include arrangements with—

- (a) any voluntary organisation or other person, being an organisation or person who—
 - (i) manages a home for persons in need and is registered in accordance with Schedule 5 in respect of the home; or
 - (ii) manages premises which do not fall within the definition of a home for persons in need in Article 2(2) by reason only of their being managed or controlled by a public body constituted by special Act of Parliament or incorporated by Royal Charter; or
- (b) any person in respect of his private home,

for the provision of accommodation in such home or premises.

(2) Arrangements under Article 15 for the provision of residential accommodation where nursing care is provided must be arrangements made with a voluntary organisation or other person, being an organisation or person managing premises—

- (a) in respect of which the organisation or other person is registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971^{F103}; or
- (b) which do not fall within the definition of nursing home in section 10(1) of that Act by reason only of being maintained or controlled by a body of persons constituted by special Act of Parliament or incorporated by Royal Charter.

(3) Any arrangements made by virtue of this Article shall provide for the making by the Department to the other party thereto of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements; and, subject to paragraph (7), the Department shall recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this Article.

(4) Subject to the following provisions of this Article, a person for whom accommodation is provided under any such arrangements shall refund to the Department any payments made in respect of him under paragraph (3).

(5) Where a person for whom accommodation is provided, or proposed to be provided, under any such arrangements satisfies the Department that he is unable to make a refund at the full rate determined under paragraph (3), the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to make a refund.

(6) Regulations may make provision for the assessment, for the purposes of paragraph (5), of a person's ability to pay.

(7) Where accommodation in any home or premises is provided for any person under arrangements made by virtue of this Article and the Department, the person concerned and

the voluntary organisation or other person managing the home or premises (in this paragraph referred to as “the provider”) agree that this paragraph shall apply—

- (a) so long as the person concerned makes the payments for which he is liable under sub-paragraph (b), he shall not be liable to make any refund under paragraph (4) or (5) and the Department shall not be liable to make any payment under paragraph (3) in respect of the accommodation provided for him;
- (b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under paragraph (4) or (5)) be liable to pay by way of refund to the Department; and
- (c) the Department shall be liable to pay to the provider the difference between the sums paid by virtue of sub-paragraph (b) and the payments which, but for sub-paragraph (a), the Department would be liable to pay under paragraph (3).

(8) The Department may, on each occasion when it makes arrangements by virtue of this Article for the provision of accommodation for a person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the refunds required from him for his accommodation during a period commencing when the Department began to make the arrangements for accommodation for him and ending not more than 8 weeks after that.”.

F103 1971 c. 32 (NI)

Art. 26 rep. by 2002 c. 5 (NI)

Charges in respect of accommodation provided by the Department

27. For Article 99 of the principal Order there shall be substituted the following Article—

“Charges in respect of accommodation provided by Department under Article 15

99.—(1) Where a person is provided under Article 15 with accommodation in premises provided by the Department, the Department shall recover from him the amount of the payment which he is liable to make in accordance with the following provisions of this Article.

(2) Subject to the following provisions of this Article, the payment which a person is liable to make for any such accommodation shall be in accordance with a standard rate determined by the Department for that accommodation and that standard rate shall represent the full cost to the Department of providing that accommodation.

(3) Subject to paragraph (4), where a person for whom such accommodation is provided, or proposed to be provided, satisfies the Department that he is unable to pay for the accommodation at the standard rate, the Department shall assess his ability to pay, and accordingly determine at what lower rate he shall be liable to pay for the accommodation.

(4) The liability of any person to pay for accommodation under this Article may be reduced by reason of any work which he performs and which assists materially in the management of the premises.

(5) Regulations may make provision for the assessment, for the purposes of paragraph (3), of a person's ability to pay.

(6) The Department may, on each occasion when it provides accommodation mentioned in paragraph (1) for any person and irrespective of his means, limit to such amount as appears to the Department reasonable for him to pay the payments required from him for

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his accommodation during a period commencing when the Department began to provide the accommodation for him and ending not more than 8 weeks after that.”.

Recovery of charges due to Department for accommodation

28. In Article 101A of the principal Order (recovery of cost of accommodation where persons have disposed of assets)—

- (a) in paragraph (2) for the words from “Article 99” to the end there shall be substituted “Article 36 or 99 the ability of the person for whom accommodation is provided to pay for it or (as the case may be) to make a refund to the Department in respect of it.”;
- (b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) If the Department so directs, paragraph (1) shall not apply in such cases as may be specified in the direction.”.

General [^{F104}health care]

F104 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](#)

General medical services

29.—(1) In Article 56 of the principal Order (general medical services)—

- (a) in paragraph (2), sub-paragraph (d) (right of certain medical practitioners to be included in list of practitioners undertaking to provide general medical services other than maternity medical services) shall cease to have effect;
- (b) in paragraph (2A) the words “be entitled to” shall cease to have effect;
- (c) after paragraph (2A) there shall be inserted the following paragraph—

“(2B) The Department may by order specify the maximum number of medical practitioners with whom, in any year, all the Health and Social Services Boards, taken as a whole, may enter into arrangements under this Article; and any such order may contain such incidental and consequential provisions (including provisions amending this Part) as appear to the Department to be appropriate.”.

(2) In Article 107(1) of the principal Order (orders subject to negative resolution) after the words “Article 16(1)” there shall be inserted “, 56(2B)”.

Limitations on right to be included on list of dental practitioners providing general dental services

30.—(1) Article 61 of the principal Order (arrangements for general dental services) shall be amended in accordance with this Article.

(2) In paragraph (2)(b) (regulations to include provision conferring a right, subject to certain qualifications, to be entered on a list of dental practitioners providing general dental services) for the words “paragraph (2A)” there shall be substituted “ paragraphs (2A) and (2AA) ”.

(3) After paragraph (2A) there shall be inserted the following paragraph—

“(2AA) Regulations may make the exercise of the right conferred by virtue of sub-paragraph (b) of paragraph (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in sub-paragraph (a) of that paragraph.”.

Pharmaceutical services

31.—(1) In Article 63 of the principal Order (arrangements for pharmaceutical services)—

(a) in paragraph (1)—

(i) for the word “supply” there shall be substituted “provision”;

(ii) at the end of sub-paragraph (b) there shall be inserted

“and

(c) such services as may be prescribed;” ;

Head (iii) rep. by 1997 NI 7

(b) in paragraph (2) after the word “mentioned” in the second place where it occurs there shall be inserted “, or to whom services mentioned in paragraph (1)(c) are to be provided”;

(c) in paragraphs (2A)(b), (c) and (d) and (2B) before the word “services” in each place where it occurs there shall be inserted “pharmaceutical”;

(d) in paragraph (2B)(d) for the words “a prescribed criterion” there shall be substituted “prescribed criteria”.

(2) Article 64 of the principal Order (persons authorised to provide pharmaceutical services) shall be renumbered as paragraph (1) of that Article and after that paragraph there shall be added the following paragraph—

“(2) No arrangements for the provision of pharmaceutical services falling within Article 63(1)(c) shall be made with persons other than those who are pharmacists or are of a prescribed description.”.

Miscellaneous and general

Director of Public Health

32.—^{F105}(1) The chief administrative medical officer of the Regional Agency shall be known as the Director of Public Health for Northern Ireland.

(1A) For any reference to the Director of Public Health of a Health and Social Services Board in—

(a) the statutory provisions mentioned in paragraph (2);

(b) any other statutory provision passed or made before the coming into operation of section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009,

there shall be substituted a reference to the Director of Public Health for Northern Ireland.]

(2) The statutory provisions referred to in paragraph (1)(a) are—

(a) section 1 of the Notification of Births Act 1907^{F106};

(b) sections 125(2) and 134 of the Factories Act (Northern Ireland) 1965^{F107};

(c) ^{F108}

(d) ^{F108}

(3) In section 22A of the Public Health Act (Northern Ireland) 1967 ^{F109} . . . (exercise of functions of chief administrative medical officer) for the words “other medical officer” there shall be substituted “other officer”.

F105 Art. 32(1)(1A) substituted (1.4.2009) for art. 32(1) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 13\(11\)](#); S.R. 2009/114, [art. 2](#)

F106 1907 c. 40

F107 1965 c. 20 (NI)

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F108 Art. 32(2)(c)(d) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

F109 Words in art. 32(3) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

Regulations, orders ^{F110}, directions and guidance]

33.—(1) Regulations under this Order shall be subject to negative resolution ^{F111}; but this is subject to paragraph (1A).]

^{F112}(1A) Regulations under the provisions mentioned in paragraph (1B) that amend only statutory instruments are subject to negative resolution; and no other regulations may be made under those provisions unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(1B) The provisions are—

- (a) Article 10B(8);
- (b) paragraph 22A(8) of Schedule 3.]

(2) Without prejudice to any other provision of this Order, any power conferred by this Order on the Department to make any regulations having a financial implication shall, if the Department of Finance and Personnel so directs, be exercisable only in conjunction with that Department.

(3) The Statutory Rules (Northern Ireland) Order 1979^{F113} shall not apply to any order made by the Department under Article 13(1) or paragraph 24 of Schedule 3.

(4) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 shall apply to a direction given by the Department under this Order as if the direction were a statutory instrument.

^{F114}(5) Any guidance given by the Department under this Order—

- (a) is to be in writing, and
- (b) may be varied or revoked by subsequent guidance.]

F110 Words in art. 33 heading substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(5)**; S.R. 2022/102, art. 2(b)

F111 Words in art. 33(1) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(2)**; S.R. 2022/102, art. 2(b)

F112 Art. 33(1A)(1B) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(3)**; S.R. 2022/102, art. 2(b)

F113 1979 NI 12

F114 Art. 33(5) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(4)**; S.R. 2022/102, art. 2(b)

Article 34—Amendments

Article 35—Repeals

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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\(2\)\(a\)\(iii\)](#)
- art. 10A(1)(e) words substituted by [2022 c. 18 \(N.I.\) Sch. 3 para. 15](#)

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](#)