

2009 No. 94

HEALTH AND SOCIAL CARE

The Northern Ireland Health Promotion Agency (Dissolution and Transfer of Staff, Assets and Liabilities) Order (Northern Ireland) 2009

Made - - - - *11th March 2009*

Coming into operation - *1st April 2009*

The Department of Health, Social Services and Public Safety^(a) makes the following Order in exercise of the powers conferred by paragraph 8A of the Schedule to the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990^(b) having considered it appropriate in the interests of health and social care.

The Department, having considered it necessary to make this Order as a matter of urgency, has not consulted with the relevant staff interests in accordance with the Special Agencies (Consultation on Dissolution) Regulations (Northern Ireland) 2009^(c).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Northern Ireland Health Promotion Agency (Dissolution and Transfer of Staff, Assets and Liabilities) Order (Northern Ireland) 2009 and shall come into operation on 1st April 2009.

(2) In this Order—

“the Act” means the Health and Social Care (Reform) Act (Northern Ireland) 2009^(d);

“the Agency” means the Northern Ireland Health Promotion Agency^(e);

“the Regional Agency” means the Regional Agency for Public Health and Social Well-being^(f);

“the transfer date” means 1st April 2009.

Dissolution of the Northern Ireland Health Promotion Agency

2. The Agency is dissolved.

(a) Formerly the Department of Health and Social Services. See S.I. 1999/283 (N.I. 1) Article 3(6)
(b) S.I. 1990/247 (N.I. 3); as amended by s. 28 of 2009 c.1 (N.I.)
(c) S.R. 2009 No. 84
(d) 2009 c.1 (N.I.)
(e) Established by S.R. 1990 No. 258
(f) Established by s.12 of 2009 c.1 (N.I.)

Revocation

3. The Northern Ireland Health Promotion Agency (Establishment and Constitution) Order (Northern Ireland) 1990(a) is revoked.

Transfer of assets and liabilities

4.—(1) On the transfer date all the assets and liabilities of the Agency, not mentioned in Article 5, shall be transferred to the Regional Agency, including without limitation—

- (a) the obligation to prepare the outstanding accounts of the Agency and to perform all statutory duties relating to those accounts;
- (b) the property held on trust;
- (c) any assets or liabilities arising out of or resulting from any contract for the purpose of enabling it to discharge its functions (including the provision of professional services relating to that contract) or arising anyway thereout.

(2) The transfer by this Order of any asset leased or hired from a third party or in which a third party has an interest, shall be binding on the third party notwithstanding that, apart from this Order, it would have required that party's consent or concurrence.

(3) Any dispute arising out of any transfer which is effected by this Order shall be referred for arbitration to a person appointed by the Department.

Transfer of staff

5.—(1) Subject to paragraph (4), this Article applies to any person who, immediately before the transfer date, was employed by the Agency.

(2) In accordance with a scheme made by the Department under Article 6, the contract of employment between a person to whom this Article applies and the Agency shall have effect from the transfer date as if originally made between that person and the Regional Agency.

(3) Without prejudice to paragraph (2)—

- (a) all the rights, powers, duties and liabilities of the Agency under or in connection with a contract to which that paragraph applies shall, by virtue of this Article, be transferred to the Regional Agency on the transfer date; and
- (b) anything done before that date by or in relation to the Agency in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the Regional Agency.

(4) Paragraphs (2) and (3) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to the detriment of that employee in his working conditions; but no such right shall arise by reason only of the change in employer effected by this Article.

(5) The Transfer of Undertakings (Protection of Employment) Regulations 2006(b) apply to the transfer whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those Regulations.

Scheme for the transfer of staff

6.—(1) A scheme made by the Department under this Article shall—

- (a) identify the transferring employees (whether by name or otherwise);
- (b) include provision securing pension protection for such employees;
- (c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and

(a) S.R. 1990 No. 258
(b) S.I. 2006/246

- (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.
- (2) Before making the scheme the Department shall consult—
 - (a) in the case of a scheme which identifies transferring employees by name, those employees; and
 - (b) in the case of a scheme which identifies transferring employees in any other way, such persons as appear to the Department to be representative of the transferring employees.
- (3) For the purposes of sub-paragraphs (1) and (2)—
 - (a) “pension protection” is secured for a transferring employee if, after the change of employer effected by the scheme, the employee has, as an employee of the Regional Agency, rights to acquire pension benefits and those rights are the same as or (taken as a whole) no less favourable than those that employee had as an employee of the Agency;
 - (b) “transferring employee” means an employee of the Agency whose contract of employment becomes a contract of employment with the Regional Agency.
- (4) Procedures under sub-paragraph (1)(c) shall involve consideration of grievances by a person other than—
 - (a) a member, or member of staff of the Regional Agency; or
 - (b) a member of staff of the Department.

Investigation of complaints by the Commissioner for Complaints

7.—(1) A complaint made under the Commissioner for Complaints (Northern Ireland) Order 1996(a) in relation to the Agency, whether made before, on or after the transfer date may be investigated by the Commissioner for Complaints notwithstanding the dissolution of the Agency as if the complaint had been made in relation to the Regional Agency.

(2) Where the Commissioner for Complaints conducts such an investigation, a report of the result of that investigation shall be sent to the Regional Agency and to the Department.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on
11th March 2009



Dr J F Livingstone
A senior officer of the
Department of Health, Social Services and Public Safety

(a) S.I. 1996/1297 (N.I. 7)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the dissolution of the Northern Ireland Health Promotion Agency on 1st April 2009 and for the transfer of its staff, assets and liabilities to the Regional Agency for Public Health and Social Well-being from that date. It also revokes the Northern Ireland Health Promotion Agency (Establishment and Constitution) Order (Northern Ireland) 1990 from 1st April 2009.

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