

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act (Northern Ireland) 2022, Cross Heading: Health and Personal Social Services (Northern Ireland) Order 1991. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Transfer of the Regional Board's functions

Health and Personal Social Services (Northern Ireland) Order 1991

136. The 1991 Order is amended as follows.

Commencement Information

- I1** Sch. 1 para. 136 not in operation at Royal Assent, see **s. 8(1)(b)**
I2 Sch. 1 para. 136 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

137. In Article 2(2), omit the definition of “the Regional Board”.

Commencement Information

- I3** Sch. 1 para. 137 not in operation at Royal Assent, see **s. 8(1)(b)**
I4 Sch. 1 para. 137 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

138. In Article 7(6), omit sub-paragraph (a).

Commencement Information

- I5** Sch. 1 para. 138 not in operation at Royal Assent, see **s. 8(1)(b)**
I6 Sch. 1 para. 138 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

139. In Article 8—

- (a) omit paragraph (2)(a);
 (b) after paragraph (9) insert—

“(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.”.

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Commencement Information

- I7** Sch. 1 para. 139 not in operation at Royal Assent, see **s. 8(1)(b)**
I8 Sch. 1 para. 139 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

140. In Article 8A(1), for “a Health and Social Services Board” substitute “the Department”.

Commencement Information

- I9** Sch. 1 para. 140 not in operation at Royal Assent, see **s. 8(1)(b)**
I10 Sch. 1 para. 140 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

141.—(1) Article 10 is amended as follows.

(2) In paragraph (1)—

(a) omit “or” at the end of sub-paragraph (a);

(b) for sub-paragraph (b) substitute—

“(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.”.

(3) In paragraph (3)—

(a) omit “this Article,”;

(b) omit sub-paragraph (a).

Commencement Information

- I11** Sch. 1 para. 141 not in operation at Royal Assent, see **s. 8(1)(b)**
I12 Sch. 1 para. 141 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

142. After Article 10 insert—

“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;

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- (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).”.

Commencement Information

- I13** Sch. 1 para. 142 not in operation at Royal Assent, see **s. 8(1)(b)**
- I14** Sch. 1 para. 142 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

143. After Article 10A insert—

“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—

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- (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.”.

Commencement Information

I15 Sch. 1 para. 143 not in operation at Royal Assent, see **s. 8(1)(b)**

I16 Sch. 1 para. 143 in operation at 1.4.2022 by **S.R. 2022/102, art. 2(b)**

144.—(1) Article 21 is amended as follows.

(2) In paragraph (1)—

- (a) for “every Health and Social Services Board” substitute “the Department”;
- (b) for “the Board” substitute “the Department”.

(3) In paragraph (4), for “the Regional Board” substitute “the Department”.

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(4) In paragraph (5), for “a Health and Social Services Board” substitute “the Department”.

Commencement Information

- I17** Sch. 1 para. 144 not in operation at Royal Assent, see **s. 8(1)(b)**
I18 Sch. 1 para. 144 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

145.—(1) Article 23 is amended as follows.

(2) In paragraph (1), omit “the Regional Board,”.

(3) In consequence, in the heading to the Article, for “Boards” substitute “the Regional Agency”.

Commencement Information

- I19** Sch. 1 para. 145 not in operation at Royal Assent, see **s. 8(1)(b)**
I20 Sch. 1 para. 145 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

146. In Article 24(2), omit sub-paragraph (a).

Commencement Information

- I21** Sch. 1 para. 146 not in operation at Royal Assent, see **s. 8(1)(b)**
I22 Sch. 1 para. 146 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

147.—(1) Article 33 is amended as follows.

(2) At the end of paragraph (1) add “; but this is subject to paragraph (1A).”.

(3) After paragraph (1) insert—

“(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.”.

(4) After paragraph (4) insert—

“(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.”.

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(5) In the heading, for “and directions” substitute “, directions and guidance”.

Commencement Information

I23 Sch. 1 para. 147 not in operation at Royal Assent, see **s. 8(1)(b)**

I24 Sch. 1 para. 147 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

148.—(1) Schedule 3 is amended as follows.

(2) For paragraph 3A substitute—

“**3A.**—(1) This paragraph applies where an HSC trust is to exercise—

- (a) social care and children functions, or
- (b) functions on behalf of the Department by virtue of a delegation direction under Article 10B(1).

(2) An order in relation to the trust must specify the operational area of the trust, that is to say, the area in relation to which those functions are to be exercisable.”.

(3) In paragraph 6, for sub-paragraphs (2) and (3) substitute—

“(2) The Department may give directions of a general or specific nature to an HSC trust as to the carrying out by that trust of any of its functions.

(3) The Department may give guidance to an HSC trust as to the carrying out by that trust of any of its functions.

(4) Any directions under sub-paragraph (2) with respect to—

- (a) the power conferred on an HSC trust by paragraph 1 of Schedule 4, or
- (b) the maximum amount which an HSC trust may invest in any investments or class of investments,

may be given only with the consent of the Department of Finance.

(5) The Department must consult the HSC trust concerned before giving any directions under sub-paragraph (2).

(6) Where the Department is of the opinion that because of the urgency of the matter it is necessary to give directions under sub-paragraph (2) without consulting the HSC trust concerned—

- (a) sub-paragraph (5) does not apply; but
- (b) the Department must as soon as reasonably practicable give notice to the HSC trust concerned of the grounds on which the Department formed that opinion.

(7) The Department must not give any direction or guidance under this paragraph that would be inconsistent with the framework document.

(8) An HSC trust must—

- (a) comply with any directions given to it under sub-paragraph (2), and

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(b) have regard to any guidance given to it under sub-paragraph (3).”.

(4) For paragraph 6A substitute—

“**6A.**—(1) An HSC trust must record such information with respect to the exercise of its functions as the Department may direct.

(2) The information must be recorded in such form, and retained for such period, as the Department may direct.”.

(5) After paragraph 6A insert—

“**6B.**—(1) An HSC trust must submit to the Department a scheme for the exercise by the trust of its social care and children functions.

(2) The Department may approve a scheme submitted to it by an HSC trust under sub-paragraph (1), either without modifications or with such modifications as may be agreed with the trust.

(3) An HSC trust must give effect to any scheme approved by the Department under sub-paragraph (2).

(4) An HSC trust—

(a) may at any time, and

(b) must if so requested by the Department,

submit a new scheme under this paragraph to the Department; and sub-paragraphs (2) and (3) apply to any such new scheme as they apply to a scheme submitted under sub-paragraph (1).”.

(6) After paragraph 6B insert—

“**6C.**—(1) The Department may by direction require an HSC trust to submit to the Department a scheme for the exercise by the trust on behalf of the Department of functions which are, or are proposed to become, exercisable by the trust by virtue of a delegation direction under Article 10B.

(2) The Department may approve a scheme submitted to it by an HSC trust under sub-paragraph (1), either without modifications or with such modifications as may be agreed with the trust.

(3) An HSC trust must give effect to any scheme approved by the Department under sub-paragraph (2).

(4) An HSC trust—

(a) may at any time, and

(b) must, if so requested by the Department

submit a new scheme under this paragraph to the Department; and sub-paragraphs (2) and (3) apply to any such new scheme as they apply to a scheme submitted under sub-paragraph (1).”.

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(7) In paragraph 13, for the words from “(other than functions” to “Order 1994)” substitute “(other than social care and children functions and functions exercisable on behalf of the Department by virtue of a delegation direction under Article 10B(1))”.

(8) After paragraph 22 insert—

“Part 3A

Directions that Certain Functions be exercised by others

22A.—(1) The Department may by direction provide for specified social care and children functions to cease to be exercisable by an HSC trust and to be exercisable instead by—

- (a) the Department;
- (b) another HSC trust;
- (c) another specified person or body.

(2) In this paragraph—

“specified” means specified in a direction under sub-paragraph (1);

“substituted person or body” means a person or body specified in a direction under sub-paragraph (1) as a person or body that is to exercise functions by virtue of the direction.

(3) A direction under sub-paragraph (1) comes into operation on such date as may be specified.

(4) A direction under sub-paragraph (1) 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 HSC trust or a substituted person or body 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 a substituted person or body or, as the case may be, the HSC trust;
- (b) for any reference to the HSC trust or a substituted person or body 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 a substituted person or body or, as the case may be, the HSC trust;

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

(5) A substituted person or body is—

- (a) entitled to enforce any rights acquired in the exercise of any functions by virtue of a direction under sub-paragraph (1), and

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- (b) liable in respect of any liabilities incurred (including any liabilities in tort) in the exercise of any such functions;

and all proceedings for the enforcement of such rights or liabilities are to be brought by or against that person or body in its own name.

(6) References in any other statutory provision to functions of an HSC trust or any specified person or body include references to functions exercisable by virtue of a direction under sub-paragraph (1).

(7) The Department may by regulations provide that paragraph 6(2) to (8) (power of Department to give directions and guidance) are to apply, subject to such modifications as may be prescribed, as between the Department and a substituted person or body in relation to such social care and children functions as may be prescribed.

(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 of functions by virtue of a direction under sub-paragraph (1).”.

Commencement Information

I25 Sch. 1 para. 148 not in operation at Royal Assent, see **s. 8(1)(b)**

I26 Sch. 1 para. 148 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

149. In Schedule 5, omit the amendment of section 11(1) of the Disabled Persons (Northern Ireland) Act 1989.

Commencement Information

I27 Sch. 1 para. 149 not in operation at Royal Assent, see **s. 8(1)(b)**

I28 Sch. 1 para. 149 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

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