
Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act (Northern Ireland) 2022, Paragraph 148. (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

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.

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(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

(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

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(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).”.

(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.

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- (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
 - (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

- I1** Sch. 1 para. 148 not in operation at Royal Assent, see **s. 8(1)(b)**
- I2** Sch. 1 para. 148 in operation at 1.4.2022 by S.R. 2022/102, **art. 2(b)**

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