
STATUTORY INSTRUMENTS

1972 No. 1265

Health and Personal Social Services (Northern Ireland) Order 1972

PART V

OTHER FUNCTIONS OF THE MINISTRY

Provision of vehicles for persons suffering from physical defect or disability

30.—(1) The Ministry may provide invalid carriages for persons appearing to it to be suffering from severe physical defect or disability, and, at the request of such a person, may provide for him a vehicle other than an invalid carriage.

(2) The Ministry may, in the case of an invalid carriage or other vehicle provided by it for, or belonging to, any such person as is mentioned in paragraph (1), on such terms and subject to such conditions as it may determine—

- (a) adapt the vehicle for the purpose of making it suitable for the circumstances of that person;
- (b) maintain and repair the vehicle;
- (c) take out insurance policies relating to the vehicle and pay the duty (if any) with which the vehicle is chargeable under^[F1] the Vehicle Excise and Registration Act 1994;
- (d) provide a structure for the keeping of the vehicle therein and provide all material and execute all works necessary for the erection of the structure.

(3) The Ministry may, on such terms and subject to such conditions as it may determine, make payments by way of grant towards costs incurred by any such person as is mentioned in paragraph (1) in respect of all or any of the following matters in relation to an invalid carriage or other vehicle provided by the Ministry for, or belonging to, that person—

- (a) the taking of any such action as is referred to in paragraph (2);
- (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel;
- (c) the taking of instruction in the driving of the vehicle.

(4) In this Article, “invalid carriage” means a mechanically propelled vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability and used solely by such a person.

F1 1994 c.22

[F2]Accommodation and services for private patients

31.—(1) If the Department is satisfied, in the case of a hospital vested in it, that it is reasonable to do so, it may authorise accommodation and services at the hospital in question to be made available,

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to such extent as it may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Department may determine and may make and recover such charges as it may determine in respect of such accommodation and services and calculate them on any basis that it considers to be the appropriate commercial basis; but the Department shall do so only if and to the extent that it is satisfied that to do so—

- (a) will not to a significant extent interfere with the performance by it of any duty imposed on it by this Order to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at hospitals vested in the Department (whether as resident or non-resident patients) otherwise than under this Article.

(2) The Department may allow accommodation and services to which an authorisation under paragraph (1) relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a hospital vested in it for the treatment of private patients of that practitioner.

(3) The Department shall revoke an authorisation under this Article only if and to the extent that it is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at hospitals vested in it) to meet the reasonable demand for them in the area served by the hospital in question.]

F2 1988 NI 24

Hospital accommodation made available on part payment

33.—(1) Where there is provided in any hospital vested in the Ministry accommodation in single rooms or small wards, the Ministry may authorise any such accommodation which is not for the time being needed by any patient on medical grounds to be made available for patients^{F3} to such extent as it may determine, and may recover such charges as it may determine in respect of such accommodation and calculate them on any basis that it considers to be the appropriate commercial basis.]

Para. (2) rep. by 1988 NI 24

F3 1988 NI 24

Cleanliness of school children

34. The Ministry may, by regulations, make provision with respect to the examination and cleanliness of the persons and clothing of pupils in attendance at grant-aided schools and, in particular, where action for the examination or cleansing of a pupil cannot immediately take place, may provide for the exclusion from school of such pupil.

Art. 35 rep. by 1992 NI 20

[^{F4}Provision of accommodation in premises maintained by voluntary organisations, etc.

36.—[

^{F5}(1) Subject to paragraph (2), arrangements must not be made under Article 15 for the provision of accommodation together with nursing or personal care for persons such as are mentioned in Article 10(1) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (residential care homes) unless —

- (a) the accommodation is to be provided, under the arrangements, in a residential care home or nursing home (within the meaning of that Order); and
- (b) a person carrying on or managing the home is registered in respect of it under that Order.]

[
^{F5}(2) The Department may by regulations make provision for or in connection with the making of arrangements under Article 15 for the provision of the accommodation in Great Britain, the Channel Islands or the Isle of Man.]

(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.

[
^{F6}(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—

- (a) where the payments made in respect of him under paragraph (3) include any amount in respect of nursing care by a registered nurse, the amount of such payments less any amount paid in respect of such nursing care;
- (b) in any other case, the amount of the payments made in respect of him under paragraph (3).

(4A) In paragraph (4) "nursing care by a registered nurse" means any services provided by a nurse registered under Article 5 of the Nursing and Midwifery Order 2001 (SI 2002 / 253) and involving—

- (a) the provision of care, or
- (b) the planning, supervision or delegation of the provision of care,

other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse so registered.]

(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^{F6} paragraph (4)(a) or (b)], 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

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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.]

- F4 1991 NI 1
- F5 2003 NI 9
- F6 2002 c. 9 (NI)

Art. 36A rep. by 2002 c. 5 (NI)

Removal to suitable premises of persons in need of care and attention

37. The Ministry shall make arrangements in accordance with Schedule 6 for the purposes of securing the necessary care and attention for persons (other than persons in respect of whom a warrant may be issued under^{F7} Article 129 of the Mental Health Order]) who—

- (a) are suffering from grave chronic disease or, being aged, infirm or physically incapacitated, are living in insanitary conditions; and
- (b) are unable to devote to themselves, or to receive from persons with whom they reside, or from persons living nearby, proper care and attention.

- F7 1986 NI 4

Protection for property of certain persons

38.—(1) Where a person—

- (a) is admitted as a patient to any hospital or is admitted to other accommodation provided under this Order; or
- (b) is removed to any other place under an order made under Schedule 6;

and it appears to the Ministry that there is danger of loss of, or damage to, any property of his by reason of his temporary or permanent inability to protect or deal with the property, and that other suitable arrangements have not been, or are not being made to prevent or mitigate the loss or damage, the Ministry shall take reasonable steps for that purpose.

(2) Paragraph (1) shall have effect in relation to persons suffering from mental disorder as if—

- (a) the reference to “hospital” included a reference to a private hospital within the meaning of the Mental Health^{F8} Order]; and
- (b) after sub-paragraph (b) there were inserted the following words—

“or

- (c) is subject to guardianship under the Mental Health^{F8} Order];” .

(3) For the purpose of discharging the duty of the Ministry under paragraph (1), a person authorised in writing by the Ministry may, at all reasonable times, enter any premises which, immediately before the person mentioned in that paragraph was admitted or removed as aforesaid, were his place of residence or usual place of residence and may deal with any property of his in any way which is reasonably necessary to prevent or mitigate loss thereof or damage thereto.

(4) The Ministry may recover from a person admitted or removed as aforesaid, or from any person who, for the purposes of this Order, is liable to maintain him, any reasonable expenses incurred by it in relation to him under the foregoing provisions of this Article.

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F8 1986 NI 4

Burial or cremation of the dead

39.—(1) The Ministry may cause to be buried or cremated the body of a deceased person who, immediately before his death, was being provided with accommodation under this Order by the Ministry.

(2) The Ministry may recover from the estate of such deceased person, or from any person who, for the purposes of this Order, was liable to maintain the deceased person immediately before his death, expenses incurred under paragraph (1),^{F9}

(3) Where the relatives of any deceased person are not known or are, by reason of their absence, poverty or otherwise, unable to defray all or part of the expenses of burying or cremating that person, the Ministry may defray the whole or part of such expenses.

(4) Nothing in this Article shall affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person; and a body shall not be cremated under this Article where the Ministry has reason to believe that cremation would be contrary to the wishes of the deceased.

F9 1986 NI 18

Art. 40 rep. by 1988 NI 23

Availability or provision of services, otherwise than for purposes of the Order

41. The Ministry may allow persons to make use, on such terms and conditions as it thinks fit, of any services the provision of which is involved in the provision of^{F10} personal social] services under this Order; and it may, in the case of services the provision of which is so involved, provide them to an extent greater than that necessitated by the provision of^{F10} personal social] services under this Order if it thinks it expedient to do so in order to allow persons to make use of them.

F10 1988 NI 24

Provision of services to persons not ordinarily resident in Northern Ireland

42.—(1) The Ministry may make available any services provided under this Order to such persons or classes of persons not ordinarily resident in Northern Ireland to such an extent and subject to such conditions as may be prescribed.

(2) Where services are provided under paragraph (1) the Ministry may, subject to such exemptions as may be prescribed, determine charges for such services and recover them in accordance with paragraphs 3 and 4 of Schedule 15.

Powers of Ministry to conduct or assist research

43. The Ministry may conduct or promote, or assist (by grant or otherwise) any person in conducting, research into—

- (a) any matter relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health services as it thinks fit;
- (b) any matter relating to the personal social services.

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Provisions relating to training

- 44.**—(1) The Ministry may, either directly or by entering into arrangements with others,—
- (a) provide training for persons with a view to, or in the course of, their employment or use of their services in the health or personal social services in Northern Ireland, in a related service in Great Britain, or by a voluntary organisation approved by the Ministry;
 - (b) allow training provided under this paragraph to be given to persons other than persons described in sub-paragraph (a), and may, under this paragraph, provide such training to an extent greater than that necessitated by the requirements of persons so described if it is thought expedient to do so in order to allow such other persons to receive such training;
 - (c) provide material and premises necessary for, or in connection with, the provision of any training referred to in sub-paragraph (a) or (b);
 - (d) provide training under this paragraph on such terms as the Ministry thinks fit.
- (2) The Ministry may, subject to such conditions as it may determine,—
- (a) make grants towards any fees or expenses incurred by, or
 - (b) defray or contribute towards the cost of maintenance of,
- persons undergoing training for any of the purposes of this Order.
- (3) The Ministry may, subject to such conditions as it may determine, pay the fees of, or make grants to, any body or persons providing training under paragraph (1).

Travelling expenses of patients, etc.

- 45.**—(1) The Ministry may, by regulations, provide for the payment^[F11] by the Department or an HSS trust] in accordance with prescribed scales and in such circumstances as may be prescribed, of the whole or part of any travelling or other out-of-pocket expenses necessarily incurred—
- (a) by any person^[F12] of a prescribed description] for the purpose of availing himself of such services under this Order^[F11] or the 1991 Order] as may be prescribed;
 - (b) by any person accompanying such person as is mentioned in paragraph (a);
 - (c) by any relative^[F12] being a person of a prescribed description,] visiting a person availing himself of services under this Order.

^[F11]and such regulations may provide for the reimbursement by the Department to an HSS trust of payments made by the trust by virtue of this paragraph.]

^[F12](2) Paragraph 1B of Schedule 15 (powers to prescribe descriptions of persons) shall have effect in relation to paragraph (1) as it has effect in relation to paragraph 1(b) of that Schedule.]

F11 1991 NI 1

F12 1988 NI 2

Provision of residential accommodation for officers

- 46.** The Ministry may provide, on such terms and conditions as may be agreed, residential accommodation for—
- (a) officers employed for the purposes of any of its functions under this Order;
 - (b) officers employed by a voluntary organisation for the purposes of any services provided under this Order.

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Loans to certain officers

47. The Ministry may make loans to such officers employed for the purposes of any of the health or personal social services and subject to such conditions as the Ministry, with the approval^{F13} . . . of the Ministry of Finance, may determine to facilitate such officers in the purchase of motor cars or motor cycles essential to the efficient carrying out of their official duties.

F13 1982 NI 6

Acquisition and disposal of land

48.—(1) The Ministry may acquire by agreement or compulsorily in accordance with the following provisions of this Article any land which in its opinion is required for the purposes of any of the health or personal social services, and any land held by it for those purposes may, if in the opinion of the Ministry it is no longer required for those purposes, be disposed of by it or be appropriated by it for other purposes of the Ministry.

[^{F14}(1A) Where the Department proposes to dispose of any land and is of the opinion that it is necessary, in order to facilitate that disposal, to acquire land adjoining that land, then, notwithstanding that the acquisition of that adjoining land is not required for the purposes of any of the health or personal social services, the Department may acquire by agreement that adjoining land.]

(2) Where the Ministry in exercise of the power conferred by paragraph (1) desires to acquire any land otherwise than by agreement, the Ministry may make an order (in this Article referred to as a “vesting order”) vesting the land in the Ministry.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications thereof specified in Schedule 7 to this Order, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order under that Act.

(4) The power to make a vesting order in respect of land—

- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily, or
- (b) which is declared by or under any transferred provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of each House of Parliament.

(5) Nothing in this Article shall authorise the Ministry to acquire, without the consent of the Ministry of Finance^{F15}, any land on or in which there is, to the knowledge of the Ministry, any historic monument or archaeological object.

(6) In paragraph (5), “historic monument” and “archaeological object” have the same meanings as in^{F16} the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995].

F14 1986 NI 24

F15 SR 1976/80

F16 1995 NI 9

Power to enter on lands

49.—(1) A person authorised in writing by the Ministry (in this Article and in Article 50 referred to as an “authorised person”) may, on production if required of his credentials, at any reasonable time enter any land for the purpose of survey, valuation or examination—

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- (a) where the Ministry proposes to acquire the land otherwise than by agreement, or
 - (b) where it appears to the Ministry that survey, valuation or examination is necessary in order to determine whether any functions of the Ministry under Article 48 should be exercised on or with respect to the land.
- (2) A power of entry under paragraph (1) shall not be exercisable in relation to any land except—
- (a) with consent given by the occupier of the land; or
 - (b) after at least twenty-four hours' notice of the intended entry has been served on the occupier or owner of the land.
- (3) If any person, other than the owner or occupier of the land, knowingly prevents an authorised person from carrying out anything which the authorised person is duly authorised to do or obstructs the authorised person in carrying out any such thing, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^[F17] level 2 on the standard scale].
- (4) If any person, being the owner or occupier of land, knowingly prevents an authorised person from duly carrying into effect any survey, valuation or examination of such land or obstructs the authorised person in doing any such survey, valuation or examination, a court of summary jurisdiction on proof thereof may order him to permit to be done on the land all things requisite for carrying into effect such survey, valuation or examination; and, if he fails to comply with the order, he shall be guilty of an offence and shall, for every day during which the failure continues, be liable on summary conviction to a fine not exceeding^[F17] level 2 on the standard scale].
- (5) Where under this Article an authorised person enters any land, he shall ensure that the land is not left less secure by reason of the entry, and the Ministry shall make good or pay compensation for any damage to property caused by, or in consequence of, the authorised person exercising any right or failing to perform any duty under this Article.
- (6) Any question of disputed compensation under this Article shall be referred to and determined by the Lands Tribunal.
- (7) Any reference in this Article to an occupier or to an owner shall be construed as including a reference to a person appointed in writing by the occupier or owner as his representative for purposes including all or any of the purposes of this Article.
- (8) Any power conferred by this Article shall be construed as including power to search and bore for the purpose of ascertaining the course of any sewers or drains or of ascertaining the nature of the subsoil therein and to take and carry away for examination specimens of the subsoil found therein.

F17 1984 NI 3

^[F18]Power of inspection

50.—(1) Any person authorised by the Department may at any reasonable time enter and inspect any premises (other than premises in respect of which any person is registered under^[F19] Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) 2003]) in which services are, or are proposed to be, provided by any person or body under arrangements made with the Department under this Order.

- (2) Any person inspecting any premises under this Article may—
 - (a) make such examination into the state and management of the premises and the services provided therein as he thinks fit;
 - (b) inspect any records (in whatever form they are held) relating to the premises, or any person for whom services have been or are to be provided there; and

- (c) require the owner of, or any person employed in, the premises to furnish him with such information as he may request.
- (3) Any person exercising the power to inspect records conferred by paragraph (2)(b)—
 - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
 - (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,to give him such reasonable assistance as he may require.
- (4) Any person inspecting any premises under this Article—
 - (a) may interview any person residing there in private—
 - (i) for the purpose of investigating any complaint as to those premises or the services provided there, or
 - (ii) if he has reason to believe that the services being provided there for that person are not satisfactory; and
 - (b) may examine any such person in private.
- (5) No person may—
 - (a) exercise the power conferred by paragraph (2)(b) so as to inspect medical records; or
 - (b) exercise the power conferred by paragraph (4)(b),unless he is a medical practitioner and, in the case of the power conferred by paragraph (2)(b), the records relate to medical treatment given at the premises in question.
- (6) Any person exercising the power of entry under paragraph (1) shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this Article “services” includes facilities and accommodation.]

F18 1992 NI 20

F19 2003 NI 9

Powers of Ministry where services are inadequate

51. If the Ministry is satisfied, after such investigation as it thinks fit, that any list prepared under this Order—

- (a) of medical practitioners undertaking to provide^[F20] primary medical services]; or
- (b) of dental practitioners undertaking to provide general dental services; or
- (c) of persons undertaking to provide general ophthalmic services; or
- (d) of persons undertaking to provide pharmaceutical services; or
- (e) of persons undertaking to provide any other services;

is not such as to secure the adequate provision of the services in question, or that for any other reason any considerable number of persons are not receiving satisfactory services under the arrangements in force under this Order, the Ministry may authorise a Health and Social Services

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Board to make such other arrangements as the Ministry may approve, or may itself make such other arrangements as appear to the Ministry to be necessary.

F20 2004 NI 2

Powers of Ministry in emergency

52.—^[F21](1) If the Ministry is of the opinion that an emergency exists and thinks it necessary to do so in order to secure the effective continuance of any service under^[F21] the health and personal social services legislation], the Ministry may direct that any functions conferred by or under^[F21] the health and personal social services legislation] on any body or person shall during the period of the emergency be performed by such other body or person as the Ministry may specify in the direction.

^[F22](2) In this Article and Article 53 “the health and personal social services legislation” means—

- (a) this Order;
- (b) the Adoption (Northern Ireland) Order 1987;
- (c) the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- (d) the 1991 Order;
- (e) the Health and Personal Social Services (Northern Ireland) Order 1994; and
- (f) the Children (Northern Ireland) Order 1995.]
- ^[F23](g) the Health Services (Primary Care) (Northern Ireland) Order 1997.]

F21 1991 NI 1

F22 1995 NI 2

F23 1997 NI 7

Default powers of Ministry

53.—(1) ^[F24]Where the Department is of opinion, on representations made to it or otherwise, that any Health and Social Services Board, special agency or HSS trust or the Agency has failed to discharge any functions conferred or imposed on it under the health and personal social services legislation], or has in carrying out those functions failed to comply with any regulations, schemes, proposals or directions relating thereto, the Ministry may after holding an inquiry make an order declaring it to be in default.

(2) When such an order is made the members of the body shall forthwith vacate their office and the order shall provide for the appointment, in accordance with^[F24] the appropriate provisions of the health and personal social services legislation], of new members of the body, and may contain such provisions as seem to the Ministry expedient for authorising any person to act in the place of the body in question pending the appointment of the new members.

(3) An order under this Article may contain such supplementary and incidental provisions as appear to the Ministry to be necessary or expedient.

F24 1991 NI 1

Art. 54 rep. by 2005 c. 12

Status:

Point in time view as at 01/01/2006.

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