

---

STATUTORY INSTRUMENTS

---

**1972 No. 1265**

**Health and Personal Social Services  
(Northern Ireland) Order 1972**

**PART XII**

**MISCELLANEOUS AND GENERAL**

*Miscellaneous*

**Exercise, in certain cases, of right of choice of person by whom services are to be provided**

**95.** Where a right to choose the person by whom services are to be provided under this Order is conferred by or under any provision of this Order, that right shall, in the case of such persons as may be prescribed, be exercisable on their behalf by other prescribed persons.

**Preservation of associations of denominational hospitals**

**96.** Where the character and associations of any hospital through which services are being or are to be provided under this Order are such as to link that hospital with a particular religious denomination, regard shall be had in the general administration of the hospital and in the making of appointments to the Health and Social Services Board administering the hospital to the preservation of the character and associations of the hospital.

**Protection for officer acting in execution of duty**

**97.—(1)** [<sup>F1</sup>An officer of—

- (a) a Health and Social Services Board;
- (b) a special agency;
- (c) the Agency,<sup>F2</sup> . . .
- (d) an HSS trust,<sup>F2</sup> or]

[<sup>F2</sup>a Health and Social Services Council,]  
<sup>F2</sup>(e)]

shall not be personally liable in respect of any act done by him in the execution of any function of any such body] and within the scope of his employment if he acted reasonably and in the honest belief that his duty required or empowered him to do it; but nothing in this paragraph shall be construed as relieving such a body of any liability in respect of acts of its officers.

(2) Where an action has been brought against an officer of a body such as is mentioned in paragraph (1) in respect of an act done by him in the execution or purported execution of any such function and the circumstances are such that he is not legally entitled to require that body to indemnify him, that body may nevertheless indemnify him against the whole or a part of any damages or costs which he may have been ordered to pay or may have incurred, if that body is satisfied that

**Status:** Point in time view as at 01/01/2006.

**Changes to legislation:** Health and Personal Social Services (Northern Ireland) Order 1972, PART XII is up to date with all changes known to be in force on or before 28 August 2023. 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)

he honestly believed that the act complained of was within the scope of his employment and that his duty required or empowered him to do it.

**F1** 1991 NI 1  
**F2** 2001 c. 3 (NI)

### Services free of charge

**98.**—(1) The services provided under this Order<sup>[F3]</sup> or the 1991 Order<sup>[F4]</sup> or the Health Services (Primary Care) (Northern Ireland) Order 1997] shall be free of charge, except where any provision contained in or made under this Order<sup>[F4]</sup> or the Health Services (Primary Care) (Northern Ireland) Order 1997] expressly provides for the making and recovery of charges.

(2) The provisions of Schedule 15 shall have effect in relation to the making and recovery of certain charges and to the other matters mentioned in that Schedule.

**F3** 1991 NI 1  
**F4** SR 1999/11

### <sup>[F5]</sup>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<sup>[F6]</sup>, other than any costs in respect of nursing care by a registered nurse (within the meaning given by Article 36(4A)) at 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 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.]

**F5** 1991 NI 1  
**F6** 2002 c. 9 (NI)

### **Liability to maintain spouse<sup>[F7]</sup> or civil partner] and children**

**100.**—(1) For the purposes of this Order—

- (a) a man shall be liable to maintain his<sup>[F7]</sup> spouse or civil partner] and his children; and
- (b) a woman shall be liable to maintain her<sup>[F7]</sup> spouse or civil partner] and her children.

<sup>[F8]</sup>(2) Any reference in paragraph (1) to a person's children shall be construed in accordance with Article 155 of the Children (Northern Ireland) Order 1995.]

**F7** SR 2005/479  
**F8** 1995 NI 2

### **Recovery of cost of accommodation for persons in need**

**101.**—(1) <sup>[F9]</sup>Where under Article 15 or 36 accommodation is provided, or proposed to be provided, for any person] (in this Article referred to as a “person accommodated”), the Ministry may bring proceedings upon complaint under<sup>[F10]</sup> Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981] against any other person who, for the purposes of this Order, is liable to maintain the person accommodated.

(2) On hearing a complaint under this Article, the court shall have regard to all the circumstances and, in particular, to the resources of the defendant, and may order the defendant to pay such sum, weekly or otherwise, as the court may consider appropriate.

(3) In this Article, “the court” means the court of summary jurisdiction having jurisdiction in the place where the accommodation was provided or applied for.

(4) Payments under paragraph (2) shall be made—

- (a) to the Ministry, in respect of the cost of accommodation, whether provided before or after the making of the order; or
- (b) to the applicant for accommodation or any other person, being a person accommodated; or
- (c) to such other person as appears to the court expedient in the interests of the person accommodated;

or as to part in one such manner and as to part in another, as may be provided by the order.

(5) The payments to be made pursuant to an order under this Article shall (irrespective of the recipient thereof) inure for the benefit of the Ministry.

**F9** 1991 NI 1  
**F10** 1981 NI 26

### **<sup>[F11]</sup>Recovery of cost of accommodation where persons have disposed of assets**

**101A.**—(1) Subject to the following provisions of this Article, where—

- (a) accommodation is provided under Article 15 or 36 for any person; and
- (b) that person knowingly and with the intention of avoiding charges for the accommodation—
  - (i) has transferred any asset to which this Article applies to some other person or persons not more than 6 months before the date on which he begins to reside in such accommodation; or

**Status:** Point in time view as at 01/01/2006.

**Changes to legislation:** Health and Personal Social Services (Northern Ireland) Order 1972, PART XII is up to date with all changes known to be in force on or before 28 August 2023. 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)

- (ii) transfers any such asset to some other person or persons while residing in the accommodation; and
- (c) either—
  - (i) the consideration for the transfer is less than the value of the asset; or
  - (ii) there is no consideration for the transfer,

the person or persons to whom the asset is transferred by the person for whom the accommodation is provided shall be liable to pay to the Department the difference between the amount assessed as due to be paid for the accommodation by the person for whom the accommodation is provided and the amount which the Department receive from him for it.
- (2) This Article applies to cash and any other asset which falls to be taken into account for the purpose of assessing under<sup>F12</sup> 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].
- (3) Paragraph (1) shall have effect in relation to a transfer by a person who leaves accommodation provided under Article 15 or 36 and subsequently resumes residence in such accommodation as if the period of 6 months mentioned in sub-paragraph (b)(i) were a period of 6 months before the date on which he resumed residence in such accommodation.
- [  
<sup>F12</sup>(3A) If the Department so directs, paragraph (1) shall not apply in such cases as may be specified in the direction.]
- (4) Where a person has transferred an asset to which this Article applies to more than one person, the liability of each of the persons to whom it is transferred shall be in proportion to the benefit accruing to him from the transfer.
- (5) A person's liability under this Article shall not exceed the benefit accruing to him from the transfer.
- (6) Subject to paragraph (7), the value of any asset to which this Article applies, other than cash, which has been transferred shall be taken to be the amount of the consideration which would have been realised for it if it had been sold on the open market by a willing seller at the time of the transfer.
- (7) For the purpose of calculating the value of an asset under paragraph (6) there shall be deducted from the amount of the consideration—
  - (a) the amount of any incumbrance on the asset; and
  - (b) a reasonable amount in respect of the expenses of the sale.]

**F11** 1986 NI 24

**F12** 1991 NI 1

*Art. 102 rep. by 1995 NI 2*

### **Failure to maintain**

**103.**—(1) Where a person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain for the purposes of this Order and, in consequence of his refusal or neglect, the Ministry provides or secures the provision of accommodation under Article 15 for that person or any other person, he shall be guilty of an offence and shall be liable on summary conviction—

- (a) where the accommodation was provided for him, to imprisonment for a term not exceeding six months;

**Changes to legislation:** Health and Personal Social Services (Northern Ireland) Order 1972, PART XII is up to date with all changes known to be in force on or before 28 August 2023. 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)

(b) in any other case, to a fine not exceeding<sup>F13</sup> level 3 on the standard scale] or to imprisonment for a term not exceeding six months, or to both.

(2) For the purposes of this Article, a person shall not be deemed to refuse or neglect to maintain himself or any other person by reason only of anything done or omitted in furtherance of a trade dispute.

**F13** 1984 NI 3

**Status:**

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

**Changes to legislation:**

Health and Personal Social Services (Northern Ireland) Order 1972, PART XII is up to date with all changes known to be in force on or before 28 August 2023. 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.