
STATUTORY INSTRUMENTS

1986 No. 2023 (N.I. 20)

NORTHERN IRELAND

**The Health and Personal
Social Services (Amendment)
(Northern Ireland) Order 1986**

Made 25th November 1986

Laid before Parliament 9th December 1986

Coming into operation in accordance with Article 1

At the Court at Buckingham Palace, the 25th day of November 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the National Health Service (Amendment) Act 1986:

1986 c. 66

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 7 of the said Act of 1986) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1974 c. 28

Title and commencement

1.—(1) This Order may be cited as the Health and Personal Social Services (Amendment) (Northern Ireland) Order 1986.

(2) Except as provided by paragraphs (3) and (4), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) Articles 3 and 4 shall come into operation on 1 March 1987 but shall have no effect in relation to anything done or omitted before that date.

(4) Article 5 shall come into operation on such day as the Head of the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply

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to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“Board” means a Health and Social Services Board established under Article 16 of the principal Order;

“the Department” means the Department of Health and Social Services;

“the food legislation” means—

1958 c. 27 (N.I.)

(a) the Food and Drugs Act (Northern Ireland) 1958; and

1979 NI 17

(b) the Control of Food Premises (Northern Ireland) Order 1979; and

(c) any regulations or order made under that Act;

“the health and safety legislation” means—

1978 NI 9

(a) the Health and Safety at Work (Northern Ireland) Order 1978 and the regulations, orders and other instruments in force under it; and

(b) existing statutory provisions (within the meaning given by Article 2(2) of that Order);

1972 NI 14

“the principal Order” means the Health and Personal Social Services (Northern Ireland) Order 1972.

Application of food legislation to Health and Social Services Boards and premises used by them

3.—(1) For the purposes of the food legislation—

(a) a Board shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; and

(b) premises used by a Board shall not be regarded as property of or property held on behalf of the Crown.

(2) The Department may by regulations—

(a) provide who is to be treated as the occupier or owner of any such premises for any of those purposes; and

(b) make such modifications of the food legislation, in its application to Boards, as appear to the Department to be necessary for its effective operation in relation to them.

(3) Regulations under sub-paragraph (a) of paragraph (2) shall be subject to negative resolution and regulations under sub-paragraph (b) of that paragraph shall be subject to affirmative resolution.

Application of health and safety legislation to Health and Social Services Boards and premises used by them

4. For the purposes of the health and safety legislation—

(a) a Board shall not be regarded as the servant or agent of the

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Crown, or as enjoying any status, immunity or privilege of the Crown; and

- (b) premises used by a Board shall not be regarded as property of or property held on behalf of the Crown.

Pharmaceutical services

5.—(1) In Article 63 of the principal Order (arrangements for pharmaceutical services), for paragraph (2) (regulations relating to such arrangements) there shall be substituted the following paragraphs—

“(2) Regulations shall provide for securing that arrangements made by a Health and Social Services Board under paragraph (1) will enable persons in the Board’s area for whom drugs, medicines or appliances mentioned in that paragraph are ordered as there mentioned to receive them from persons with whom such arrangements have been made.

(2A) The regulations shall include provision—

- (a) for the preparation, publication and maintenance of lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services;
- (b) that an application to a Health and Social Services Board for inclusion in such a list shall be made in the prescribed manner and shall state—
- (i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
- (ii) the premises from which he will undertake to provide those services;
- (c) that, except in prescribed cases—
- (i) an application for inclusion in such a list by a person not already included; and
- (ii) an application by a person already included in such a list for inclusion also in respect of services or premises other than those already listed in relation to him,
- shall be granted only if the Health and Social Services Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services or some of the services, specified in the application; and
- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—

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- (i) has never provided from those premises, or
 - (ii) has ceased to provide from them,
- the services, or any of the services, which he is listed as undertaking to provide from them.

(2B) The regulations may include provision—

- (a) that an application to a Health and Social Services Board may be granted in respect of some only of the services specified in it;
- (b) that an application to a Health and Social Services Board relating to services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed;
- (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
- (d) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to a prescribed criterion; and
- (e) that the prescribed body may give its approval subject to conditions.

(2C) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of paragraph (2A) or (2B).

(2D) The regulations shall be so framed as to preclude—

- (a) a person included in a list published under paragraph (2A)(a); and
- (b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in paragraph (2A)(c) should be granted or an appeal against such a decision brought by virtue of paragraph (2C) should be allowed.”.

(2) In Article 64 of the principal Order (which prevents a Board from making arrangements relating to pharmaceutical services with certain persons, except as provided by regulations), for the words “by regulations” there shall be substituted the words “by or under regulations”.

1978 NI 26

(3) In consequence of paragraph (1) the following provisions of the Health and Personal Social Services (Northern Ireland) Order 1978 are hereby repealed—

- (a) in Article 13 the words “and 63(2)(c)”;
- (b) in Article 14, paragraph (b).

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Remuneration of persons providing general medical services, etc.

6.—(1) On a determination of remuneration for any of the descriptions of services mentioned in Article 64A of the principal Order (general medical services, general dental services, general ophthalmic services and pharmaceutical services) or any category of services falling within such a description the determining authority may adjust the amount of the remuneration in either or both of the following ways—

- (a) by deducting an amount to take account of any overpayment;
- (b) by adding an amount to take account of any underpayment,

if it appears to the authority that an earlier determination was unsatisfactory.

(2) An earlier determination is to be taken to have been unsatisfactory only if, had it fallen to the authority to make it at the time of the later determination, the authority would have made it on the basis of different information.

(3) If an amount falls to be deducted by virtue of paragraph (1)(a) the determining authority, in fixing amounts of remuneration for persons to whom the determination relates, may have regard to the period within which they first provided services of the description to which it relates.

(4) In this Article—

“earlier determination” means an earlier determination of remuneration of the same or other persons for services of the same description or any category of services falling within that description and includes such a determination made before the commencement of this Article;

“overpayment” means the aggregate of any amounts which were properly paid under the earlier determination but which in the authority’s opinion were paid because that determination was unsatisfactory, exclusive of any portion of that aggregate in respect of which a deduction under paragraph (1) has already been made; and

“underpayment” means the aggregate of any amounts which in the authority’s opinion would have been paid under the earlier determination if that determination had not been unsatisfactory, exclusive of any portion of that aggregate in respect of which an addition under paragraph (1) has already been made.

(5) If the later determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in Article 64A(1) of the principal Order, it is immaterial whether the earlier determination was of remuneration for the same category of services or for any other category of services falling within the same description.

(6) In Article 64A(9) of the principal Order (matters to be taken

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into account in making determinations)—

(a) in sub-paragraph (a), for the words “a kind to which the determination will relate” there shall be substituted the words “the description to which the determination will relate or of any category falling within that description”; and

(b) for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;”.

(7) At the end of that Article there shall be added the following paragraph—

“(10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in paragraph (1), the reference in paragraph (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”.

G. I. de Deney,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order is made only for purposes corresponding to those of the National Health Service (Amendment) Act 1986.

Articles 3 and 4 apply the food legislation and the health and safety legislation to Health and Social Services Boards, thereby removing from them Crown Immunity under that legislation (which consists principally of the Food and Drugs Act (Northern Ireland) 1958 and the Health and Safety at Work (Northern Ireland) Order 1978).

Article 5 amends Article 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 (arrangements for pharmaceutical services) and removes the unconditional right (subject only to the provisions of that Order relating to disqualification) to be included in a list of persons providing those services.

Article 6 makes provision relating to the determination of the remuneration of persons providing general medical services, general dental services, general ophthalmic services and pharmaceutical services, in particular relating to the practice of adjusting future payments to offset past underpayments or overpayments.

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