STATUTORY INSTRUMENTS

1988 No. 2249 (N.I. 24)

The Health and Medicines (Northern Ireland) Order 1988

- - - - - - *21st December 1988*

Title and commencement

1.—(1) This Order may be cited as the Health and Medicines (Northern Ireland) Order 1988.

(2) Except as provided by paragraphs (3) and (4), this Order shall come into operation on such day or days as the Head of the Department may by order appoint[F1].

(3) The following provisions shall come into operation on 28th December 1988 namely—

(a) this Article;

(b) Article 2;

(c) Article 9;

(d) Article 10(3).

(4) The following provisions shall come into operation on the expiration of 2 months from the day on which this Order is made, namely—

(a) Article 3;

(b) Article 6;

(c) Article 10(1) and (2);

(d) Article 11;

(e) Article 12;

(f) Article 13 and the Schedule, except so far as they relate to Article 58 of the principal Order and the Health and Personal Social Services and Public Health (Northern Ireland) Order 1986[F2] .

(5) The Department may by regulations make—

(a) such transitional provision;

(b) such consequential provision; and

(c) such savings,

as it considers necessary or expedient in preparation for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision which is repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in force.

(6) Regulations under paragraph (5)—

(a) shall be subject to negative resolution; and

(b) may modify any statutory provision (including this Order).

F1 partly exercised by SR 1988/451; 1989/98, 197, 421
F2 1986 NI 24

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F3] shall apply 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—

"the Department" means the Department of Health and Social Services;

"the principal Order" means the Health and Personal Social Services (Northern Ireland) Order 1972[F4] ;

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954.

F3 1954 c. 33 (NI)
F4 1972 NI 14

Extension of powers of the Department for financing [[F5]health care]

3.—(1) In order to make more income available for improving **[**[F5]health care**]**, the Department shall have the powers specified in paragraph (2); but nothing in this Article authorises the Department or any body to which it gives directions under paragraph (3) to disregard any statutory provision or rule of law or to override any person's contractual or proprietory rights.

(2) The powers mentioned in paragraph (1) are powers**[**[F6] (exercisable outside as well as within Northern Ireland)**]**

(a) to acquire, produce, manufacture and supply goods;

(b) to acquire land by agreement and manage and deal with land;

(c) to supply accommodation to any person;

(d) to supply services to any person and to provide new services;

(e) to provide instruction for any person;

(f) to develop and exploit ideas and exploit intellectual property;

(g) to do anything whatsoever which appears to the Department to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by this paragraph; and

(h) to make such charge as the Department considers appropriate for anything that it does in the exercise of any such power and to calculate any such charge on any basis that it considers to be the appropriate commercial basis.

(3) The Department may give directions (having regard to the existing work of voluntary bodies) —

(a) for the exercise of any of those powers by any body constituted under the principal Order **[**[F7]or the 2009 Act**]**[[F8] or the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990**]**[[F9] or the Northern Ireland Practice and Education Council for Nursing and Midwifery.**]**; and

(b) with respect to the manner in which any such body is to exercise any such power;

and it shall be the duty of the body in question to comply with the directions.

(4) The directions may provide that any power to which they relate shall be exercisable subject to any limitations specified in the directions.

(5) The directions may be varied or revoked by subsequent directions.

(6) The Department shall exercise the powers specified in paragraph (2)(*c*) and (*d*) only if and to the extent that it is satisfied that anything which it proposes to do in the exercise of those powers does not fall within Article 31 of the principal Order.

(7) The Department shall exercise the powers specified in paragraph (2)(*f*) only after consulting (to the extent that it appears to the Department to be practical) any person who appears to the Department to have an interest through his own previous research in the ideas or intellectual property in question as to whether the Department should exercise those powers and, if so, as to any financial arrangements.

(8) The Department shall exercise the powers specified in paragraph (2) only if and to the extent that the Department is satisfied that anything which it proposes to do—

(a) will not to a significant extent interfere with the performance by the Department of any duty imposed on it by the principal Order; 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 for the purposes of its functions under the principal Order (whether as resident or non# resident patients) otherwise than under Article 31 of the principal Order.

(9) For Articles 31 and 32 of the principal Order there shall be substituted the following Article—

"**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, 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 facilitites 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.".

(10) In Article 33 of the principal Order—

(a) in paragraph (1) for the words from "who undertake, or in respect of whom an undertaking is given" to the end there shall be substituted the words " 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. " ; and

(b) paragraph (2) shall cease to have effect.

(11) In Article 41 of the principal Order after the words "provision of" in the second and fourth places where they occur there shall be inserted the words " personal social " .

(12) Expressions used in this Article and in the principal Order have the same meanings in this Article as in the principal Order.

F5 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(b)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
F6 1991 NI 1
F7 Words in art. 3(3)(a) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 11(1)**; S.R. 2009/114, **art. 2**
F8 1990 NI 3
F9 2002 c. 9 (NI)

Retirement of practitioners

4. [F10] . . . . . .

F10 Art. 4 repealed (26.3.2008) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2), ss. 13, 17, 18(1)(a)(c), **Sch. 2 Pt. 1**

Reduction of pension on re#employment after attaining 65

5. Regulation 69 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984[F11] (under which further employment as a practitioner between the ages of 65 and 70 years in the case of a person who became entitled to a pension as a practitioner on or after attaining the age of 65 years is to be disregarded for the purpose of determining whether his pension is to be reduced) is hereby revoked.

F11 SR 1984/336

Dental services for school children

6.—(1) Article 9 of the principal Order shall have effect subject to the amendments specified in paragraphs (2) to (6).

(2) In paragraph (1) the words "and dental" in both places where they occur shall cease to have effect.

(3) After paragraph (1) there shall be inserted the following paragraph—

"(1A) Subject to paragraph (4), the Department shall provide, to such extent as it considers necessary to meet all reasonable requirements—

(a) for the dental inspection of such persons as are mentioned in paragraph (1);

(b) for the dental supervision of such persons; and

(c) for the education of such persons in dental health.” .

(4) In paragraph (4) for the words “Paragraphs (1)” there shall be substituted the words “ Paragraphs (1), (1A) ” and at the end there shall be added the words “ and for the education of such persons in dental health ” .

(5) In paragraph (6) for the words from “make provision” to “each person” there shall be substituted the words “ make, by means of a scheme approved by the Department, such provision as is mentioned in paragraph (4), then, in respect of each person for whom any service is provided under such provision, ” .

(6) In paragraph (7) after the words “in attendance at the school” there shall be inserted the words “ and for the education of such persons in dental health ” .

(7) In Article 61 of the Education and Libraries (Northern Ireland) Order 1986[F12]

(a) in paragraph (1) for the words from “the medical” to the end there shall be substituted the words “ such inspection, supervision and education as is provided for under paragraph (1) or (1A) of Article 9 of the Health and Personal Social Services (Northern Ireland) Order 1972 ” ;

(b) paragraph (2) shall cease to have effect.

F12 1986 NI 3

Charges for dental appliances and treatment

7.—(1) In sub#paragraph (*a*) of paragraph 1 of Schedule 15 to the principal Order for heads (*i*) and (*ia*) there shall be substituted the following heads—

“(i) such charges as may be prescribed in respect of such services (other than services provided as part of the general dental services) provided under this Order as may be prescribed;

(ia) a charge of an amount calculated in accordance with paragraph 1A in respect of any services provided as part of the general dental services, not being—

(a) the repair of appliances other than prescribed appliances; or

(b) the arrest of bleeding;

(iaa) charges of amounts calculated in accordance with paragraph 1A in respect of the supply under this Order of dentures and other dental appliances of prescribed descriptions;” .

(2) In Schedule 15 to the principal Order for paragraph 1A there shall be substituted the following paragraph—

“**1A.**—(1) Subject to the following provisions of this paragraph, regulations made with the approval of the Department of Finance and Personnel may make such provision as to the amount of any charge—

(a) authorised by paragraph 1(*a*)(*ia*) for the provision of services; or

(b) authorised by paragraph 1(*a*)(*iaa*) for the supply of dentures or other dental appliances,

as appears to the Department to be appropriate.

(2) Without prejudice to the generality of sub#paragraph (1), regulations may provide that any charge which is so authorised in respect of appliances or services supplied or provided under Part VI—

(a) shall be of an amount equal—

(i) to the practitioner's remuneration in respect of the supply or provision; or

(ii) to any part of that remuneration; or

(b) shall be otherwise calculated by reference to that remuneration.

(3) Without prejudice to the generality of sub#paragraph (1), regulations may provide that any charge which is authorised in respect of appliances supplied otherwise than under Part VI—

(a) shall be of an amount equal—

(i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or

(ii) to any part of such remuneration; or

(b) shall be otherwise calculated by reference to such remuneration.

(4) The charge shall not exceed the amount which the Department considers to be the cost to **[**[F13]health care**]** of the supply or provision.

(5) In this paragraph "cost to **[**[F13]health care**]**" does not include—

(a) any fee in respect of a visit by a practitioner to a patient;

(b) any fee in respect of the exceptional attendance by a practitioner at his surgery in order to provide emergency treatment; or

(c) any fee or part of a fee payable by a patient in pursuance of regulations under Article 61(2)(*d*) or (3).".

F13 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(b)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

General ophthalmic services and optical appliances

8.—(1) In Article 62(1) of the principal Order for the words from "of sight by them" to the end there shall be substituted the words "by them of the sight—

(a) of a child;

(b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or

(c) of a person of such other description as may be prescribed." .

(2) At the end of Article 62 of the principal Order there shall be added the following paragraphs—

"(4) In this Article—

"child" means—

(a) a person who is under the age of 16 years; or

(b) a person who is under the age of 19 years and receiving qualifying full#time education; and

"qualifying full#time education" means full#time instruction—

(a) at an educational establishment recognised by the Department as being, or as comparable to, a school, college or university; or

(b) by other means accepted as comparable by the Department,

and for the purposes of this definition regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full#time instruction.

(5) Regulations under this Article may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this paragraph, may direct that they shall be calculated—

(a) by a method set out in the regulations;

(b) by a method described by reference to a method of calculating or estimating income or capital specified in a transferred provision other than this Article or by reference to such a method but subject to prescribed modifications;

(c) by reference to an amount applicable for the purposes of a payment under a transferred provision; or

(d) by reference to the person's being or having been entitled to payment under a transferred provision.

(6) Descriptions of persons may be prescribed for the purposes of paragraph (1) by reference to any criterion and, without prejudice to the generality of this paragraph, by reference to any of the following criteria—

(a) their age;

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;

(d) their receipt of benefit in money or in kind under any transferred provision or their entitlement to receive any such benefit; and

(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.

(7) Regulations which refer to a transferred provision may direct that the reference is to be construed as a reference to that provision—

(a) as it has effect at the time when the regulations are made; or

(b) both as it has effect at that time and as amended subsequently.

(8) Regulations may provide that a person—

(a) whose sight is tested by a person who provides general ophthalmic services; and

(b) who is shown during the testing or within a prescribed time after it to fall within paragraph (1),

shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—

(i) for the purposes of any arrangements under this Article;

(ii) for the purposes of remuneration in respect of the testing; and

(iii) for any such other purpose as may be prescribed,

as a testing of sight under this Order.

(9) Regulations shall define the services for the provision of which arrangements under this Article are to be made and the services so defined are in this Order referred to as “general ophthalmic services” .” .

(3) In Article 2(2) of the principal Order in the definition of “general ophthalmic services” for the words “Article 62(1)” there shall be substituted the words “ Article 62(9) ” .

(4) In paragraph 2A(1) of Schedule 15 to the principal Order after head (*c*) (but not as part of it) there shall be added the words “or for which a prescription has been given for a person such as is

mentioned in head (*a*), (*b*) or (*c*) in consequence of a testing of sight (not being a testing of sight under this Order) which took place in prescribed circumstances" .

(5) In paragraph 2A of Schedule 15 to the principal Order for sub#paragraph (4) there shall be substituted the following sub#paragraphs—

"(4) The Department may by regulations—

(a) provide for the Department or a Health and Social Services Board or the Agency to contribute to the cost of a testing of sight which the Department, the Board or the Agency accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;

(b) provide for payments to be made by the Department or a Health and Social Services Board or the Agency to meet, or to contribute towards, any costs accepted by the Department, the Board or the Agency as having been incurred (whether by way of charge under this Order or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of sight of a person of a prescribed description; and

(c) direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this head, give any such direction as to how they are to be calculated as may be given by regulations under paragraph 1B(2).

(4A) Descriptions of person may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub#paragraph, by reference to any of the criteria specified in paragraph 1B(1).

(4B) Sub#paragraph (3) of paragraph 1B shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that paragraph." .

[F14]Remuneration in respect of training for other persons

9.—(1) At the end of paragraph (1) of Article 64A of the principal Order there shall be added the words " and may include provision for the remuneration of persons providing those services in respect of the instruction of any person in matters relating to those services " .

(2) At the end of paragraph (2)(*d*) of Article 64A of that Order there shall be added the words " or instruction " .

(3) Any determination in relation to remuneration in respect of general medical services, general dental services, general ophthalmic services or pharmaceutical services which was made after the making of this Order but at a time before the commencement of Article 4(1) of the Health and Social Security (Northern Ireland) Order 1984[F15] shall be deemed to be validly made if regulations authorising such a determination could have been made had that provision been in operation at that time.

F14 prosp. rep. by 2001 c. 3 (NI)
F15 1984 NI 8

Arrangements for provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services

10.—(1) Without prejudice to the generality of Articles[F16]. . . , 61, 62 or 63 of the principal Order, the powers to make regulations conferred by each of those Articles include power—

(a) to make provision as to the investigation (following a complaint or otherwise) of any matter relating to services under the Article in question;

(b) to specify—

(i) who is to conduct an investigation;

(ii) whether an inquiry may be held in connection with an investigation;

(iii) rights of appeal following a decision or recommendation on an investigation;

(iv) who is to conduct an appeal; and

(v) the procedure to be followed on any investigation, inquiry or appeal;

(c) to direct that in prescribed circumstances one or more of the sanctions specified in paragraph (2) shall be available;1973 No. 416

(d) to make provision for any purposes (whether or not falling within sub#paragraph (*a*), (*b*) or (*c*)) that appear to the Department to correspond to the purposes of any provision contained in the Health and Personal Social Services (Services Committee) Regulations (Northern Ireland) 1973[F17] .

(2) The sanctions mentioned in paragraph (1)(*c*) are—

(a) in the case of any person—

(i) recovery of an amount by deduction from his remuneration or otherwise; and

(ii) a warning that he should comply more closely with his obligations under arrangements made in accordance with the relevant regulations; and

(b) in the case of a dental practitioner, a restriction on his carrying out treatment or a description of treatment without first obtaining from a body prescribed by the regulations approval of an estimate in relation to it.

(3) Regulations made—

(a) before the making of this Order; or

(b) after it but before the coming into operation of this Article,

shall be deemed to be validly made if they could have been validly made had this Article been in operation.

[[F18](4) This Article applies also in relation to additional pharmaceutical services provided in accordance with a direction under Article 63A of the principal order.**]**

F16 2004 NI 2
F17 S.R. & O. (NI) 1973/416
F18 1997 NI 7

Transfer of staff from civil service to Health and Social Services Boards, etc.

11. Where a person becomes an employee of a body constituted under the principal Order **[**[F19]or the 2009 Act (within the meaning of the principal Order)**]** on direct transfer from employment in the civil service of Northern Ireland or the civil service of the United Kingdom his period of employment in that civil service at the time of the transfer shall count for the purposes of**[**[F20] the Employment Rights (Northern Ireland) Order 1996**]** as a period of employment by the body whose employee he becomes, and the transfer shall not break the continuity of the period of employment or give rise to any right to a redundancy payment.

F19 Words in art. 11 inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 11(2)**; S.R. 2009/114, **art. 2**
F20 1996 NI 16

HIV testing kits and services

12.—(1) The Department may provide by regulations, made subject to negative resolution, that a person—

(a) who sells or supplies to another an HIV testing kit or any component part of such a kit;

(b) who provides another with HIV testing services; or

(c) who advertises such kits or component parts or such services,

shall be guilty of an offence.

(2) The power to make regulations conferred by this Article includes power to make such incidental or supplemental provision as the Department considers appropriate.

(3) If any person contravenes regulations under this Article he shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment to a fine or to imprisonment for a term of not more than two years, or to both.

(4) In this Article—

"HIV" means Human Immunodeficiency Virus of any type;

"HIV testing kit" means a diagnostic kit the purpose of which is to detect the presence of HIV or HIV antibodies; and

"HIV testing services" means diagnostic services the purpose of which is to detect the presence of HIV or HIV antibodies in identifiable individuals.

Article 13—Repeals

Schedule—Repeals

Status:
Point in time view as at 01/04/2009.

Changes to legislation:
There are currently no known outstanding effects for the The Health and Medicines (Northern Ireland) Order 1988.