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*Status: Point in time view as at 01/04/2022.*

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## STATUTORY INSTRUMENTS

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# 1991 No. 194 (N.I. 1)

## The Health and Personal Social Services (Northern Ireland) Order 1991

- - - - - 5th February 1991

### Introductory

#### **Title and commencement**

1.—(1) This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1991.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

(3) The following provisions shall come into operation on 1st April 1991, namely—

- (a) this Article;
- (b) Articles 2, 3, 4, 6, 29(1)(a) and (b), 30, 32 and 33;
- (c) Schedule 1;
- (d) Part I of Schedule 5 and Article 34 so far as it relates to that Part;
- (e) Part I of Schedule 6 and Article 35 so far as it relates to that Part.

(4) An order under paragraph (2) may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Head of the Department necessary or expedient in connection with the provisions brought into operation.

<b>F1</b> fully exercised SRs 1991/131, 1992/196, 1993/162
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#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F2</sup> 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—

“goods” includes accommodation;

“the principal Order” means the Health and Personal Social Services (Northern Ireland) Order 1972<sup>F3</sup>;

[<sup>F4</sup>“provide” includes manage;]

<sup>F5</sup> ...

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“services” includes services of any description, whether or not being services under the principal Order.

(3) Article 2(2) [<sup>F6</sup>and (2A)] of the principal Order (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

- F2** 1954 c. 33 (NI)
- F3** 1972 NI 14
- F4** 2001 c. 3 (NI)
- F5** Words in art. 2(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 137**; S.R. 2022/102, art. 2(b)
- F6** Words in art. 2(3) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(2)**; S.R. 2009/114, **art. 2**

### Health and [<sup>F7</sup> social care] bodies

- F7** 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)(a)** (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**

### Constitution of Health and Social Services Boards

3. <sup>F8</sup> .....

- F8** Art. 3 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), **Sch. 6 para. 13(3)**, **Sch. 7**; S.R. 2009/114, **art. 2**

### Health and Social Services Councils

4. <sup>F9</sup> .....

- F9** Art. 4 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), **Sch. 6 para. 13(3)**, **Sch. 7**; S.R. 2009/114, **art. 2**

Art. 5 rep. by 2001 c. 3 (NI)

### Abolition of Northern Ireland Health and Social Services Training Council

6. <sup>F10</sup> .....

- F10** Art. 6 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

### Removal of Crown immunities

7.—(1) <sup>F11</sup> .....

(2) In Schedule 2—

(a) Part I has effect to continue certain exemptions for [<sup>F12</sup>health and social care body to which this Article applies] and property held, used or occupied by such bodies; <sup>F13</sup> . . .

(b) <sup>F13</sup> .....

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(3) Where, as a result of the provisions of paragraph (1), by virtue of his employment during any period after the day appointed for the coming into operation of that paragraph—

- (a) an employee has contractual rights against a [<sup>F14</sup>health and social care body to which this Article applies] to benefits in the event of his redundancy, and
- (b) he also has statutory rights against the [<sup>F14</sup>health and social care body to which this Article applies] under [<sup>F15</sup> Part XII of the Employment Rights (Northern Ireland) Order 1996] (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in sub-paragraph (a) shall be taken as satisfying his entitlement to benefits under the said [<sup>F15</sup> Part].

(4) Nothing in paragraph (1) affects the extent of the expression “the services of the Crown” where it appears in—

- (a) Schedule 1 to the Registered Designs Act 1949<sup>F16</sup> (provisions as to the use of registered designs for the services of the Crown etc.); and
- (b) sections 55 to 59 of the Patents Act 1977<sup>F17</sup> (use of patented inventions for services of the Crown);

and, accordingly, services provided in pursuance of any power or duty of the Department under Part II or V of the principal Order [<sup>F18</sup>or the 2009 Act] shall continue to be regarded as included in that expression, whether the services are in fact provided by a [<sup>F19</sup>health and social care body to which this Article applies], an [<sup>F20</sup>HSC trust] or any other person.

(5) The Department may by order made subject to affirmative resolution provide that, in relation to any provision contained in a local Act and specified in the order, the operation of paragraph (1) shall be excluded or modified to the extent specified in the order.

[<sup>F21</sup>(6) This Article applies to the following health and social care bodies—

- <sup>F22</sup>(a) .....
- (b) the Regional Agency;
- (c) RBSO;
- (d) a special agency.]

**F11** Art. 7(1) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(a), Sch. 7; S.R. 2009/114, art. 2

**F12** Words in art. 7(2) substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(b); S.R. 2009/114, art. 2

**F13** Art. 7(2)(b) and preceding word repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(c), Sch. 7; S.R. 2009/114, art. 2

**F14** Words in art. 7(3) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(b); S.R. 2009/114, art. 2

**F15** 1996 NI 16

**F16** 1949 c. 88

**F17** 1977 c. 37

**F18** Words in art. 7(4) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(d); S.R. 2009/114, art. 2

**F19** Words in art. 7(4) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(b); S.R. 2009/114, art. 2

**F20** 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

**F21** Art. 7(6) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 13(4)(e); S.R. 2009/114, art. 2

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**F22** Art. 7(6)(a) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 138**; S.R. 2022/102, art. 2(b)

## Provision of goods and services

### Health and <sup>F23</sup>social care] contracts

**8.**—(1) The bodies mentioned in sub-paragraphs (a) to (e) of paragraph (2) may, for the purpose of carrying out their functions and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

- (a) one another; or
- (b) any of the bodies or persons mentioned in sub-paragraphs (f) to (j) of that paragraph.

(2) The bodies and persons referred to in paragraph (1) are—

<sup>F24</sup><sup>F25</sup>(a) .....

- (aa) the Regional Agency;
- (b) RBSO;]
- (c) special agencies;
- (d) <sup>F26</sup>Health and Social Care trusts];
- (e) the Department;

*Sub#para. (f) rep. by 2001 c. 3 (NI)*

(g) any of the following within the meaning of the National Health Service Act 1977<sup>F27</sup>

<sup>F28</sup>(i) .....

<sup>F29</sup>(ii) .....

- (iii) NHS trusts;
- Head (iv) rep. by 2001 c. 3 (NI)*

(v) the Dental Practice Board;

<sup>F30</sup>(vi) .....

<sup>F31</sup>(ga) the National Health Service Commissioning Board;

- (gb) clinical commissioning groups established under section 14D of the National Health Service Act 2006;
- (gc) Special Health Authorities established under section 28 of that Act;
- (gd) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;
- (ge) Local Health Boards established under section 11 of that Act;
- (gf) NHS trusts established under section 18 of that Act;]
- (h) any of the following within the meaning of the National Health Service (Scotland) Act 1978<sup>F32</sup>

(i) Health Boards;

<sup>F33</sup>(ia) Special Health Boards;]

- (ii) the Common Services Agency for the Scottish Health Service;
- (iii) the Scottish Dental Practice Board;
- (iv) NHS trusts;

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*Head (v) rep. by 2001 c. 3 (NI)*

[<sup>F34</sup>(ha) Healthcare Improvement Scotland,]

<sup>F35</sup>(i) .....

[<sup>F36</sup>(ia) the National Institute for Health and Care Excellence;

(ib) the Health and Social Care Information Centre;]

(j) the Secretaries of State respectively concerned with health in England, in Wales and in Scotland.

[<sup>F37</sup>(2A) The bodies mentioned in paragraph (2) may be referred to as “ [<sup>F38</sup>health care] bodies”.]

(3) An arrangement falling within paragraph (1) shall be known as a health and [<sup>F23</sup>social care] contract and is referred to in this Order as an “ [<sup>F39</sup>HSC contract]”.

(4) Whether or not an arrangement which constitutes an [<sup>F39</sup>HSC contract] would, apart from this paragraph, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Department for determination under the following provisions of this Article.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an [<sup>F39</sup>HSC contract], it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangement cannot be agreed,

that party may refer the terms of the proposed arrangement to the Department for determination under the following provisions of this Article.

(6) Where a reference is made to the Department under paragraph (4) or (5), the Department may determine the matter itself or, if the Department considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

(7) In the determination of a reference under paragraph (5), the Department or, as the case may be, the person appointed under paragraph (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(8) A determination of a reference under paragraph (4) may contain such directions (including directions as to payment) as the Department or, as the case may be, the person appointed under paragraph (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the [<sup>F39</sup>HSC contract] in question to comply with any such directions.

(9) Without prejudice to the generality of the powers exercisable on a reference under paragraph (4), the Department or, as the case may be, the person appointed under paragraph (6) may in a determination in relation to an arrangement constituting an [<sup>F39</sup>HSC contract] vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

(a) subject to sub-paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and

(b) directions included in the determination by virtue of paragraph (8) may contain such provisions as the Department or, as the case may be, the person appointed under paragraph (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

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[<sup>F40</sup>(9A) The references in paragraphs (6) to (9) to a “person” include a body prescribed for the purposes of those paragraphs.

(9B) The Department may by regulations establish a body for those purposes; and such regulations may make provision—

- (a) as to the members of the body, including the terms and conditions of their appointment;
- (b) for the payment of fees and allowances to members of the body.]

(10) Where a body or person mentioned in [<sup>F41</sup>any of sub-paragraphs (g) to (gf), (h), (ha), (ia), (ib) and (j) of paragraph (2)] is a party or prospective party to an arrangement or proposed arrangement which—

- (a) falls within paragraph (1); and
- (b) also falls within the definition of NHS contract in section 4 of the National Health Service and Community Care Act 1990<sup>F42</sup> or section 17A of the National Health Service (Scotland) Act 1978<sup>F43</sup>,

paragraphs (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Department of references to the Department and the Secretary of State acting jointly.

- F23** 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)(a)** (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F24** Art. 8(2)(a) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 139(a)**; S.R. 2022/102, art. 2(b)
- F25** Art. 8(2)(a)(aa)(b) substituted (1.4.2009) for art. 8(2)(a)(b) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(5)**; S.R. 2009/114, **art. 2**
- F26** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(c)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F27** 1977 c. 49
- F28** Art. 8(2)(g)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F29** Art. 8(2)(g)(ii) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F30** Art. 8(2)(g)(vi) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 25**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F31** Art. 8(2)(ga)-(gf) inserted (1.2.2013 for specified purposes (except insofar as it inserts sub-paragraph (gf))) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(b)**; S.I. 2012/2657, art. 2(4)
- F32** 1978 c. 29
- F33** Art. 8(2)(h)(ia) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(c)**; S.I. 2012/2657, art. 2(4)
- F34** Art. 8(2)(ha) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(d)**; S.I. 2012/2657, art. 2(4)
- F35** Art. 8(2)(i) omitted (1.2.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(e)**; S.I. 2012/2657, art. 2(4)
- F36** Art. 8(2)(ia)(ib) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(2)(f)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F37** 1997 NI 7
- F38** 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**
- F39** 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)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

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- F40** Art. 8(9A)(9B) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 139(b)**; S.R. 2022/102, art. 2(b)
- F41** Words in art. 8(10) substituted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 43(3)**; S.I. 2012/2657, art. 2(4) (with art. 14)
- F42** 1990 c. 19
- F43** 1978 c. 29

#### Modifications etc. (not altering text)

- C1** Art. 8 power to modify conferred by Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), art. 61E(3)(4) (as substituted (prosp.) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2), **ss. 2(2)**, 18(2)(a))
- C2** Art. 8 temp. modification (1.2.2013 until 1.4.2013) by The Health and Social Care Act 2012 (Commencement No. 3, Transitional, Savings and Transitory Provisions and Amendment) Order 2012 (S.I. 2012/2657), **art. 14**; S.I. 2013/160, **art. 2(2)** (the temp. modification end date of 1.4.2013 does not apply to (S.I. 2012/2657), art. 14(c))

#### [<sup>F44</sup>Provision of certain services under [<sup>F45</sup>HSC contracts]

**8A.**—(1) This Article applies to any arrangement under which [<sup>F46</sup>the Department] or such other [<sup>F47</sup>health care] body as may be prescribed arranges for the provision to it—

- (a) by a person on an ophthalmic list, or
- (b) by a person on a pharmaceutical list,

of goods or services that it reasonably requires for the purposes of functions which it is exercising under Part II of the principal Order.

(2) Any such arrangement is to be treated as an [<sup>F48</sup>HSC contract] for the purposes of Article 8 (other than paragraphs (5) and (7)).

(3) In this Article—

“ophthalmic list” means a list published in accordance with regulations made under—

- (a) Article 62(2)(a) of the principal Order;
- (b) section 39(a) of the National Health Service Act 1977; or
- (c) section 26(2)(a) of the National Health Service (Scotland) Act 1978;

“pharmaceutical list” means a list published in accordance with regulations made under—

- (a) Article 63(2A)(a) of the principal Order;
- (b) section 42(2)(a) of the National Health Service Act 1977; or
- (c) section 27(2) of the National Health Service (Scotland) Act 1978.]

**F44** 1997 NI 7

**F45** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**F46** Words in art. 8A(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 140**; S.R. 2022/102, art. 2(b)

**F47** 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**

**F48** 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)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

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**Primary and other functions of Health and Social Services Boards and special agencies**

9. <sup>F49</sup> .....

**F49** Art. 9 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(6), Sch. 7; S.R. 2009/114, art. 2

**[<sup>F50</sup>Health and Social Care trusts]**

**F50** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(c) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

**[<sup>F51</sup>Health and Social Care trusts]**

**10.**—[<sup>F52</sup>(1) Subject to paragraph (2), the Department may by order establish bodies, to be known as [<sup>F51</sup>Health and Social Care trusts] (in this Order referred to as [<sup>F53</sup>HSC trusts])—

- (a) to provide goods and services for the purposes of the health and [<sup>F54</sup>social care]; <sup>F55</sup>...
- [<sup>F56</sup>(b) to exercise social care and children functions (see Article 10A); or
- (c) to exercise, on behalf of the Department, such functions as the Department may direct under Article 10B.]

[<sup>F57</sup>(2) Before making an order under paragraph (1), the Department shall consult—

- (a) the Patient and Client Council, and
- (b) such other persons and bodies as the Department considers appropriate.]]

(3) In <sup>F58</sup>...Articles 11 to 13 and Schedule 3 “a relevant body” means—

<sup>F59</sup>[<sup>F60</sup>(a) .....

- (aa) the Regional Agency;
- (b) RBSO; or]
- (c) a special agency.

(4) Every [<sup>F61</sup>HSC trust]—

- (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Department and, subject to paragraph 5(2) of Schedule 3, executive and non-executive directors (that is to say, directors who, subject to paragraph (6), respectively are and are not employees of the trust);
- (b) shall have the functions conferred on it by an order under paragraph (1) and by Schedule 3; and
- (c) shall be a body to which section 19 of the Interpretation Act (Northern Ireland) 1954<sup>F62</sup> applies.

[<sup>F52</sup>(5) The functions which may be specified in an order under paragraph (1) include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.]

[<sup>F63</sup>(5A) The functions of an [<sup>F61</sup>HSC trust] also include power to provide services in accordance with arrangements made under Article 15B of the principal Order, and to do so as a member of a qualifying body (within the meaning of Article 15C of that Order).]

(6) The Department may by regulations make general provision with respect to—



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- (a) the qualifications for and the tenure of office of the chairman and directors of an [F61HSC trust] (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
- (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
- (c) the maximum and minimum numbers of the directors;
- (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;
- (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
- (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board);

and, without prejudice to the generality of the power, any such regulations may make provision to deal with cases where the post of any officer of an [F61HSC trust] is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

(7) Part I of Schedule 3 shall have effect with respect to orders under paragraph (1); Part II of that Schedule shall have effect, subject to paragraph (8), with respect to the general duties and the powers and status of [F53HSC trusts]; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of [F53HSC trusts].

[F52(8) A power conferred by paragraph 14 or 15 of Part II of Schedule 3 may only be exercised—

- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the [F61HSC trust] of its functions or of its obligations under [F64HSC contracts]; and
- (b) in circumstances specified in directions under paragraph 6 of that Schedule, with the consent of the Department.]

(9) The Department may by order confer on [F53HSC trusts] specific powers additional to those contained in paragraphs 10 to 15 of Schedule 3.

**F51** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(c\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F52** 2001 c. 3 (NI)

**F53** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F54** 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\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

**F55** Word in [art. 10\(1\)](#) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 141\(2\)\(a\)](#); S.R. 2022/102, [art. 2\(b\)](#)

**F56** [Art. 10\(1\)\(b\)\(c\)](#) substituted for [art. 10\(1\)\(b\)](#) (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 141\(2\)\(b\)](#); S.R. 2022/102, [art. 2\(b\)](#)

**F57** [Art. 10\(2\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 13\(7\)\(a\)](#); S.R. 2009/114, [art. 2](#)

**F58** Words in [art. 10\(3\)](#) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 141\(3\)\(a\)](#); S.R. 2022/102, [art. 2\(b\)](#)

**F59** [Art. 10\(3\)\(a\)](#) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 141\(3\)\(b\)](#); S.R. 2022/102, [art. 2\(b\)](#)

**Status:** Point in time view as at 01/04/2022.

**Changes to legislation:** The Health and Personal Social Services (Northern Ireland) Order 1991 is up to date with all changes known to be in force on or before 09 May 2024. 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)

- F60** Art. 10(3)(a)(aa)(b) substituted (1.4.2009) for art. 10(3)(a)(b) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(7)(b)**; S.R. 2009/114, **art. 2**
- F61** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F62** 1954 c. 33 (NI)
- F63** 1997 NI 7
- F64** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**Modifications etc. (not altering text)**

- C3** Art. 10 referred to (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), **ss. 1(3), 34(3)**; S.R. 2009/114, **art. 2**

**[<sup>F65</sup>Definition of social care and children functions”**

**10A.—**(1) In Article 10 and Schedule 3 “social care and children functions” means the following functions (so far as they are exercisable by HSC trusts under the provisions conferring them)—

- (a) functions under sections 35 and 96 of the Children and Young Persons Act (Northern Ireland) 1968;
- (b) functions under Articles 15, 36, 37, 38, 39, 99, 101 and 101A of, and Schedule 6 to, the Health and Personal Social Services (Northern Ireland) Order 1972;
- (c) functions under sections 1(2), 2 and 12(1) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978;
- (d) functions under the Mental Health (Northern Ireland) Order 1986;
- (e) functions under the Adoption (Northern Ireland) Order 1987;
- (f) functions under sections 4 to 9 of the Disabled Persons (Northern Ireland) Act 1989;
- (g) functions under the Children (Northern Ireland) Order 1995;
- (h) the function of making or submitting pre-sentence reports within the meaning of Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 or Article 4(1) of the Criminal Justice (Northern Ireland) Order 2008;
- (i) functions under the Carers and Direct Payments Act (Northern Ireland) 2002;
- (j) functions under the Mental Capacity Act (Northern Ireland) 2016.

(2) The Department may by regulations amend the list of social care and children functions set out in paragraph (1).]

- F65** Art. 10A inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 142**; S.R. 2022/102, art. 2(b)

**[<sup>F66</sup>Certain functions of the Department to be exercisable on its behalf by HSC trusts**

**10B.—**(1) The Department may by direction provide for specified functions of the Department to be exercisable, in relation to the operational area of a specified HSC trust, by that trust on behalf of the Department.

(2) In this Article—

“delegation direction” means a direction under paragraph (1);

“specified” means specified in a delegation direction.

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- (3) A delegation direction comes into operation on such date as may be specified.
- (4) A delegation direction 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 Department or an HSC trust 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 the other of them;
  - (b) for any reference to the Department or an HSC trust 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 the other of them;
- and any such transitional provisions have effect, for those purposes, in relation to such acts, statutory provisions, statutory documents, orders or directions.

- (5) An HSC trust is—
- (a) entitled to enforce any rights acquired in the exercise of any delegated functions, and
  - (b) liable in respect of any liabilities incurred (including any liabilities in tort) in the exercise of any delegated functions,
- in all respects as if it were acting as a principal; and all proceedings for the enforcement of such rights or liabilities are to be brought by or against the trust in its own name.

(6) In paragraph (5) “delegated functions” means functions exercised by the trust by virtue of a delegation direction.

(7) References in any other statutory provision to functions of an HSC trust include references to functions exercisable by an HSC trust on behalf of the Department by virtue of a delegation direction.

(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 by HSC trusts of functions of the Department by virtue of delegation directions.]

**F66** Art. 10B inserted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 143](#); S.R. 2022/102, art. 2(b)

### **Transfer of staff to <sup>F67</sup>HSC trusts]**

**11.**—(1) Subject to paragraph (5), this Article applies to any person who, immediately before an <sup>F67</sup>HSC trust's] operational date—

- (a) is employed by a relevant body to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or
  - (b) is employed by a relevant body to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this Article by a scheme made by the relevant body specified as mentioned in paragraph 3(1)(f) of Schedule 3.
- (2) A scheme under this Article shall not have effect unless approved by the Department.
- (3) Subject to Article 12, the contract of employment between a person to whom this Article applies and the relevant body by which he is employed shall have effect from the operational date as if originally made between him and the <sup>F68</sup>HSC trust].
- (4) Without prejudice to paragraph (3)—
- (a) all the relevant body's rights, powers, duties and liabilities under or in connection with a contract to which that paragraph applies shall by virtue of this Article be transferred to the <sup>F68</sup>HSC trust] on its operational date; and

**Status:** Point in time view as at 01/04/2022.

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- (b) anything done before that date by or in relation to the relevant body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the [F68HSC trust].
- (5) In any case where—
  - (a) an order under Article 10(1) provides for the establishment of an [F68HSC trust] with effect from a date earlier than the operational date of the trust, and
  - (b) on or after that earlier date but before its operational date the [F68HSC trust] makes an offer of employment by the trust to a person who at that time is employed by a relevant body to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust, and
  - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the [F68HSC trust],

paragraphs (3) and (4) shall have effect in relation to that person's contract of employment as if he were a person to whom this Article applies and any reference in those paragraphs to the operational date of the trust were a reference to the date on which he takes up employment with the trust.

(6) Paragraphs (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this Article.

(7) A scheme under this Article may designate a person either individually or as a member of a class or description of employees.

- F67** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F68** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

### Supplementary provisions as to transfer of staff

**12.—**(1) In the case of a person who falls within Article 11(1)(b), a scheme under that Article may provide that, with effect from the [F69HSC trust's] operational date, his contract of employment (in this Article referred to as “his original contract”) shall be treated in accordance with the scheme as divided so as to constitute—

- (a) a contract of employment with the [F70HSC trust]; and
- (b) a contract of employment with the relevant body by which he was employed before that date.
- (2) Where a scheme makes provision as mentioned in paragraph (1),—
  - (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that paragraph, when taken together, are not less favourable than the benefits under his original contract;
  - (b) Article 11 shall apply in relation to the contract referred to in paragraph (1)(a) as if it were a contract transferred under that Article from the relevant body mentioned in paragraph (1)(b) to the [F70HSC trust];
  - (c) so far as necessary to preserve any rights and obligations, the contract referred to in paragraph (1)(b) shall be regarded as a continuation of the employee's original contract; and

*Sub#para. (d) rep. by 1996 NI 16*

*Para. (3) rep. by 1996 NI 16*

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(4) Where, as a result of the provisions of Article 11, by virtue of his employment during any period after the operational date of the [F70HSC trust],—

- (a) an employee has contractual rights against an [F70HSC trust] to benefits in the event of his redundancy, and
- (b) he also has statutory rights against the trust under[F71 Part XII of the Employment Rights (Northern Ireland) Order 1996] (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in sub-paragraph (a) shall be taken as satisfying his entitlement to benefits under the said[F71 Part].

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| <b>F69</b> | Words in Order substituted (1.4.2009) by virtue of <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a> |
| <b>F70</b> | Words in Order substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>           |
| <b>F71</b> | 1996 NI 16   |

### Transfer of assets and liabilities to [F72HSC trusts]

13.—(1) The Department may by order transfer or provide for the transfer to an [F73HSC trust], with effect from such date as may be specified in the order, of such of the assets and liabilities of the Department or of a relevant body as, in the Department's opinion, need to be transferred to the trust for the purpose of enabling it to carry out its functions.

(2) An order under this Article may create or impose such new rights or liabilities in respect of what is transferred or what is retained by the Department or a relevant body as appear to the Department to be necessary or expedient.

(3) Nothing in this Article affects the power of the Department or any power of a relevant body to transfer assets or liabilities to an [F73HSC trust] otherwise than under paragraph (1).

(4) Stamp duty shall not be chargeable in respect of any transfer to an [F73HSC trust] effected by or by virtue of an order under this Article.

(5) Where an order under this Article provides for the transfer—

- (a) of land held on lease from a third party, or
- (b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer shall be binding on the third party notwithstanding that, apart from this paragraph, it would have required his consent or concurrence.

(6) Any assets and liabilities which are to be transferred to an [F73HSC trust] shall be identified by agreement between the trust and a relevant body or, in default of agreement, by direction of the Department.

(7) Where, for the purpose of a transfer pursuant to an order under this Article, it becomes necessary to apportion any assets or liabilities, the order may contain such provisions as appear to the Department to be appropriate for the purpose; and where any such assets fall within paragraph (5), the order shall contain such provisions as appear to the Department to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

(8) In the case of any transfer made by or pursuant to an order under this Article, a certificate issued by the Department that any asset or liability specified in the certificate is vested in the [F73HSC trust] specified in the order shall be conclusive evidence of that fact for all purposes.

**Status:** Point in time view as at 01/04/2022.

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(9) An order under this Article may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

(10) In this Article “third person” means a person other than the Department or a relevant body.

- F72** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F73** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### Originating capital debt of, and other financial provisions relating to, [<sup>F74</sup>HSC trusts]

14.—(1) Each [<sup>F75</sup>HSC trust] shall have an [<sup>F76</sup> originating capital] of an amount specified in an order made by the Department, being an amount representing, subject to paragraph (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.

(2) In determining the [<sup>F76</sup> originating capital] of an [<sup>F75</sup>HSC trust], there shall be left out of account such assets or, as the case may be, liabilities as are, or are of a class, determined for the purposes of this Article by the Department.

(3) An [<sup>F74</sup>HSC trust's][<sup>F76</sup> originating capital] shall be deemed to have been issued out of moneys appropriated by Measure and shall constitute an asset of the Consolidated Fund.

[<sup>F76</sup>(4) An [<sup>F74</sup>HSC trust's] originating capital shall be public dividend capital.]  
*Paras. (5), (6) rep. by 2001 c. 3 (NI)*

(7) The Department may determine<sup>F76</sup>

- [<sup>F76</sup>(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Order;
- (b) the amount of any such public dividend capital which is to be repaid at any time;
- (c) any other terms on which any public dividend capital is so issued or treated as issued.]

(8) An order under paragraph (1) and a determination under paragraph (2)<sup>F76</sup> . . . or (7) shall be made with the consent of the Department of Finance and Personnel.

(9) Schedule 4 shall have effect with respect to—

- (a) borrowing by [<sup>F74</sup>HSC trusts];
- (b) the limits on their indebtedness;
- (c) the payment of additional public dividend capital to them; and
- (d) the application of any surplus funds of [<sup>F74</sup>HSC trusts].

- F74** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F75** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F76** 2001 c. 3 (NI)

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## Financial obligations of [F77HSC trusts]

**15.**—(1) Every [F78HSC trust] shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) It shall be the duty of every [F78HSC trust] to achieve such financial objectives as may from time to time be set by the Department with the consent of the Department of Finance and Personnel and as are applicable to it; and any such objectives may be made applicable to [F77HSC trusts] generally, or to a particular [F78HSC trust] or to [F77HSC trusts] of a particular description.

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| <p><b>F77</b> Words in Order substituted (1.4.2009) by virtue of <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a></p> <p><b>F78</b> Words in Order substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a></p> |
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## Trust funds and trustees for [F79HSC trusts]

**16.**—(1) The Department may by order provide for the appointment of trustees for an [F80HSC trust]; and any trustees so appointed shall have power to accept, hold and administer any property on trust for the general or any specific purposes of the [F80HSC trust] (including the purposes of any specific hospital or other establishment or facility[F81 at or from which services are provided] by the trust).

- (2) An order under paragraph (1) may—
- make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment;
  - make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Department);
  - make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Department after consultation with such persons as it considers appropriate; and
  - make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where, under paragraph (1), trustees have been appointed for an [F80HSC trust]—
- the Department may by order transfer or provide for the transfer of endowments or other property held on trust from the [F80HSC trust] to the trustees so appointed; and
  - an order under Article 13 may transfer or provide for the transfer of endowments or other property held on trust by a Health and Social Services Board to the trustees for an [F80HSC trust] and, accordingly, in relation to such endowments or other property, references in Article 13 to an [F80HSC trust] shall be construed as including references to the trustees for that trust.
- (4) Paragraphs (4), (5) and (8) of Article 13 apply, with appropriate modifications, in relation to an order under paragraph (3)(a) as they apply in relation to an order under that Article.
- (5) Subject to paragraphs (6) to (8) and to any provision made by an order under Article 13, the transfer under Article 13 or paragraph (3)(a) of any property held on trust shall not affect the trusts on which the property is held.
- (6) Any discretion given by a trust instrument to the trustees of property transferred under Article 13 or paragraph (3)(a) shall be exercisable by the body to which or persons to whom the property is so transferred.

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(7) Where—

- (a) Schedule 14 to the principal Order applies to an endowment held by a Health and Social Services Board; and
- (b) that endowment is transferred—
  - (i) to an [F80HSC trust] or the trustees for an [F80HSC trust] under Article 13; or
  - (ii) to the trustees for an [F80HSC trust] under paragraph (3)(a), having previously been transferred to the [F80HSC trust] under Article 13,

the said Schedule 14 shall apply to the use of that endowment by the [F80HSC trust] or, as the case may be, the trustees for the [F80HSC trust] as it applied to the use thereof by the Health and Social Services Board.

(8) Where—

- (a) Article 81 of the principal Order applies to any property held by a Health and Social Services Board; and
- (b) that property is transferred—
  - (i) to an [F80HSC trust] or the trustees for an [F80HSC trust] under Article 13; or
  - (ii) to the trustees for an [F80HSC trust] under paragraph (3)(a), having previously been transferred to the [F80HSC trust] under Article 13,

the said Article 81 shall apply to the administration of that property by the [F80HSC trust] or, as the case may be, the trustees for the [F80HSC trust] as it applied to the administration thereof by the Health and Social Services Board.

(9) References in this Article—

- (a) to property include references to the rights and liabilities arising from property;
- (b) to endowments and property held on trust include references to the income and accumulated income thereof.

<b>F79</b>	Words in Order substituted (1.4.2009) by virtue of <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>
<b>F80</b>	Words in Order substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>
<b>F81</b>	2001 c. 3 (NI)

## Fund-holding practices

*Arts. 17#20 rep. by 2001 c. 3 (NI)*

## Indicative amounts

### Indicative amounts for doctors' practices

**21.**—(1) Subject to [F82 paragraphs (2) and (8)], for each financial year, [F83 the Department] shall, by notice given to each practice <sup>F84</sup> . . . , specify an amount of money (in this Order referred to as an “indicative amount”) representing the basic price of the drugs, medicines and listed appliances which, in the opinion of [F85 the Department] , it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice.

*Para. (2) rep. by 2001 c. 3 (NI)*

(3) For the purposes of this Article, a “practice” means—



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- [<sup>F86</sup>(a) a person or body who has entered into a contract under Article 57 of the principal Order, otherwise than in partnership; or
- (b) two or more individuals practising in partnership who together have entered into such a contract;]

and any reference to the members of a practice shall be construed accordingly.

(4) The members of a practice shall seek to secure that, except with the consent of [<sup>F87</sup>the Department] or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial year does not exceed the indicative amount notified to the practice for that year under paragraph (1).

(5) For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it under paragraph (1) for any financial year, [<sup>F88</sup>the Department] shall set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice.

(6) For the purposes of this Article, regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines or listed appliances.

(7) <sup>F89</sup> .....

(8) In this Article “listed” has the same meaning as in Article 63 of the principal Order.

(8A) <sup>F89</sup> .....

[<sup>F82</sup>(9) This Article does not apply in relation to the performance or provision of personal medical services in accordance with arrangements made under Article 15B of the principal Order.]

<b>F82</b>	1997 NI 7
<b>F83</b>	Words in art. 21(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), <b>Sch. 1 para. 144(2)(a)</b> ; S.R. 2022/102, art. 2(b)
<b>F84</b>	Words in art. 21(1) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(8)(a), <b>Sch. 7</b> ; S.R. 2009/114, <b>art. 2</b>
<b>F85</b>	Words in art. 21(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), <b>Sch. 1 para. 144(2)(b)</b> ; S.R. 2022/102, art. 2(b)
<b>F86</b>	2004 NI 2
<b>F87</b>	Words in art. 21(4) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), <b>Sch. 1 para. 144(3)</b> ; S.R. 2022/102, art. 2(b)
<b>F88</b>	Words in art. 21(5) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), <b>Sch. 1 para. 144(4)</b> ; S.R. 2022/102, art. 2(b)
<b>F89</b>	Art. 21(7)(8A) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(8)(c), <b>Sch. 7</b> ; S.R. 2009/114, <b>art. 2</b>

### Financial provisions

Art. 22 rep. by 2003 NI 5

### Power of [<sup>F90</sup>the Regional Agency] , special agencies and [<sup>F91</sup>HSC trusts] to raise funds by appeals, collections, etc.

**23.—**(1) The Department may by regulations confer power on [<sup>F92</sup>the Regional Board, <sup>F93</sup>...], special agencies and [<sup>F91</sup>HSC trusts] (in this Article referred to as “relevant bodies”) to engage in activities to which this Article applies, but before making any regulations under this Article the Department shall consult the relevant bodies and such other bodies as the Department thinks fit.

**Status:** Point in time view as at 01/04/2022.

**Changes to legislation:** The Health and Personal Social Services (Northern Ireland) Order 1991 is up to date with all changes known to be in force on or before 09 May 2024. 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)

(2) This Article applies to activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the relevant bodies in providing or improving any services or any facilities or accommodation which is or are or is or are to be provided as part of the health and [F94social care] or to assist the relevant bodies in connection with their functions with respect to research, including, subject to paragraph (3),—

- (a) public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities; and
- (b) activities involving the use of land, premises or other property held by or for the benefit of the relevant bodies, subject however to any restriction on the purposes for which trust property may be used.

(3) Regulations under this Article may provide that this Article shall not apply to activities of a prescribed description.

(4) Subject to paragraphs (5) to (8), the relevant body at whose instance property is given in pursuance of this Article shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for the purpose for which it was given.

(5) Where property is given in pursuance of this Article on trust for any purposes of an [F95HSC trust] for which trustees have been appointed under Article 16(1), then, if those trustees and the [F95HSC trust] agree, the property may be held, administered and applied by those trustees instead of by the [F95HSC trust]; and references in paragraphs (6) to (8) to a relevant body accordingly include references to trustees for an [F95HSC trust].

(6) Where property held by a relevant body under this Article is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the relevant body as the relevant body thinks fit.

(7) Where property held by a relevant body under this Article is insufficient to enable the purpose for which it was given to be fulfilled then—

- (a) the relevant body may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purposes for which the trust property may be applied, and in the case of money paid or payable by the Department under Article 87(1) of the principal Order, to any directions it may give; but
- (b) where the capital or income applicable under sub-paragraph (a) is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the relevant body shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the relevant body as the relevant body thinks fit.

(8) Where under paragraph (6) or (7) property becomes applicable for purposes other than that for which it was given, the relevant body shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

**F90** Words in art. 23 heading substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 145\(3\)](#); S.R. 2022/102, art. 2(b)

**F91** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F92** Words in art. 23(1) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 13\(9\)](#); S.R. 2009/114, [art. 2](#)

**F93** Words in art. 23(1) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 145\(2\)](#); S.R. 2022/102, art. 2(b)

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- F94** 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\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F95** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

### Schemes for meeting losses and liabilities, etc., of certain health and [<sup>F96</sup>social care] bodies

24.—(1) The Department may by regulations made with the consent of the Department of Finance and Personnel establish a scheme whereby any of the bodies mentioned in paragraph (2) may make provision to meet—

- (a) expenses arising from any loss of or damage to their property; and
- (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies concerned.

(2) The bodies referred to in paragraph (1) are—

<sup>F97</sup>(a) . . . . .

- (aa) the Regional Agency;
- (b) RBSO;
- (c) special agencies; and
- (d) [<sup>F98</sup>HSC trusts];

but a scheme under this Article may limit the class or description of bodies which are eligible to participate in it.

(3) Without prejudice to the generality of the power conferred by paragraph (1), a scheme under this Article may—

- (a) provide for the scheme to be administered by the Department or by a body specified in the scheme (being a body mentioned in paragraph (2));
- (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
- (c) provide for the making of payments for the purposes of the scheme by the Department.

(4) Without prejudice to any other power of direction conferred on the Department,—

- (a) if the Department so directs, a body which is eligible to participate in a scheme shall do so; and
- (b) where a scheme provides for it to be administered by the Department, a body mentioned in paragraph (2) shall carry out such functions in connection with the administration of the scheme by the Department as the Department may direct.

[<sup>F99</sup>(5) A person or body administering a scheme under this Article does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under the scheme.]

- F96** 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\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F97** Art. 24(2)(a) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 146](#); S.R. 2022/102, art. 2(b)
- F98** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F99** SI 2001/3649

*Status: Point in time view as at 01/04/2022.*

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## Provision of accommodation

### Arrangements by Department for provision of accommodation by voluntary organisations, etc.

25. For Article 36 of the principal Order there shall be substituted the following Article—

#### **“Provision of accommodation in premises maintained by voluntary organisations, etc.**

**36.—**(1) Subject to paragraph (2) and Article 36A, arrangements made by the Department under Article 15 may include arrangements with—

- (a) any voluntary organisation or other person, being an organisation or person who—
  - (i) manages a home for persons in need and is registered in accordance with Schedule 5 in respect of the home; or
  - (ii) manages premises which do not fall within the definition of a home for persons in need in Article 2(2) by reason only of their being managed or controlled by a public body constituted by special Act of Parliament or incorporated by Royal Charter; or
- (b) any person in respect of his private home,

for the provision of accommodation in such home or premises.

(2) Arrangements under Article 15 for the provision of residential accommodation where nursing care is provided must be arrangements made with a voluntary organisation or other person, being an organisation or person managing premises—

- (a) in respect of which the organisation or other person is registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971<sup>F100</sup>; or
- (b) which do not fall within the definition of nursing home in section 10(1) of that Act by reason only of being maintained or controlled by a body of persons constituted by special Act of Parliament or incorporated by Royal Charter.

(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.

(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 any payments made in respect of him under paragraph (3).

(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 paragraph (3), 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 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.”.

**F100** 1971 c. 32 (NI)

Art. 26 rep. by 2002 c. 5 (NI)

### **Charges in respect of accommodation provided by the Department**

27. For Article 99 of the principal Order there shall be substituted the following Article—

#### **“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.

(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

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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.”.

### Recovery of charges due to Department for accommodation

**28.** In Article 101A of the principal Order (recovery of cost of accommodation where persons have disposed of assets)—

- (a) in paragraph (2) for the words from “Article 99” to the end there shall be substituted “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.”;
- (b) after paragraph (3) there shall be inserted the following paragraph—
 

“(3A) If the Department so directs, paragraph (1) shall not apply in such cases as may be specified in the direction.”.

### General [<sup>F101</sup>health care]

**F101** 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 medical services

**29.**—(1) In Article 56 of the principal Order (general medical services)—

- (a) in paragraph (2), sub-paragraph (d) (right of certain medical practitioners to be included in list of practitioners undertaking to provide general medical services other than maternity medical services) shall cease to have effect;
- (b) in paragraph (2A) the words “be entitled to” shall cease to have effect;
- (c) after paragraph (2A) there shall be inserted the following paragraph—
 

“(2B) The Department may by order specify the maximum number of medical practitioners with whom, in any year, all the Health and Social Services Boards, taken as a whole, may enter into arrangements under this Article; and any such order may contain such incidental and consequential provisions (including provisions amending this Part) as appear to the Department to be appropriate.”.

(2) In Article 107(1) of the principal Order (orders subject to negative resolution) after the words “Article 16(1)” there shall be inserted “, 56(2B)”.

### Limitations on right to be included on list of dental practitioners providing general dental services

**30.**—(1) Article 61 of the principal Order (arrangements for general dental services) shall be amended in accordance with this Article.

(2) In paragraph (2)(b) (regulations to include provision conferring a right, subject to certain qualifications, to be entered on a list of dental practitioners providing general dental services) for the words “paragraph (2A)” there shall be substituted “ paragraphs (2A) and (2AA) ”.

(3) After paragraph (2A) there shall be inserted the following paragraph—

“(2AA) Regulations may make the exercise of the right conferred by virtue of sub-paragraph (b) of paragraph (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in sub-paragraph (a) of that paragraph.”.

## Pharmaceutical services

**31.**—(1) In Article 63 of the principal Order (arrangements for pharmaceutical services)—

(a) in paragraph (1)—

(i) for the word “supply” there shall be substituted “provision”;

(ii) at the end of sub-paragraph (b) there shall be inserted

“and

(c) such services as may be prescribed;” ;

*Head (iii) rep. by 1997 NI 7*

(b) in paragraph (2) after the word “mentioned” in the second place where it occurs there shall be inserted “, or to whom services mentioned in paragraph (1)(c) are to be provided”;

(c) in paragraphs (2A)(b), (c) and (d) and (2B) before the word “services” in each place where it occurs there shall be inserted “pharmaceutical”;

(d) in paragraph (2B)(d) for the words “a prescribed criterion” there shall be substituted “prescribed criteria”.

(2) Article 64 of the principal Order (persons authorised to provide pharmaceutical services) shall be renumbered as paragraph (1) of that Article and after that paragraph there shall be added the following paragraph—

“(2) No arrangements for the provision of pharmaceutical services falling within Article 63(1)(c) shall be made with persons other than those who are pharmacists or are of a prescribed description.”.

## Miscellaneous and general

### Director of Public Health

**32.**—<sup>F102</sup>(1) The chief administrative medical officer of the Regional Agency shall be known as the Director of Public Health for Northern Ireland.

(1A) For any reference to the Director of Public Health of a Health and Social Services Board in—

(a) the statutory provisions mentioned in paragraph (2);

(b) any other statutory provision passed or made before the coming into operation of section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009,

there shall be substituted a reference to the Director of Public Health for Northern Ireland.]

(2) The statutory provisions referred to in paragraph (1)(a) are—

(a) section 1 of the Notification of Births Act 1907<sup>F103</sup>;

(b) sections 125(2) and 134 of the Factories Act (Northern Ireland) 1965<sup>F104</sup>;

(c) <sup>F105</sup>.....

(d) <sup>F105</sup>.....

(3) In section 22A of the Public Health Act (Northern Ireland) 1967 <sup>F106</sup> . . . (exercise of functions of chief administrative medical officer) for the words “other medical officer” there shall be substituted “other officer”.

**F102** Art. 32(1)(1A) substituted (1.4.2009) for art. 32(1) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 13\(11\)](#); S.R. 2009/114, [art. 2](#)

**F103** 1907 c. 40

**F104** 1965 c. 20 (NI)

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**F105** Art. 32(2)(c)(d) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

**F106** Words in art. 32(3) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), **Sch. 7**; S.R. 2009/114, **art. 2**

## Regulations, orders <sup>F107</sup>, directions and guidance]

**33.**—(1) Regulations under this Order shall be subject to negative resolution <sup>F108</sup>; but this is subject to paragraph (1A).]

<sup>F109</sup>(1A) Regulations under the provisions mentioned in paragraph (1B) that amend only statutory instruments are subject to negative resolution; and no other regulations may be made under those provisions unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(1B) The provisions are—

- (a) Article 10B(8);
- (b) paragraph 22A(8) of Schedule 3.]

(2) Without prejudice to any other provision of this Order, any power conferred by this Order on the Department to make any regulations having a financial implication shall, if the Department of Finance and Personnel so directs, be exercisable only in conjunction with that Department.

(3) The Statutory Rules (Northern Ireland) Order 1979<sup>F110</sup> shall not apply to any order made by the Department under Article 13(1) or paragraph 24 of Schedule 3.

(4) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 shall apply to a direction given by the Department under this Order as if the direction were a statutory instrument.

<sup>F111</sup>(5) Any guidance given by the Department under this Order—

- (a) is to be in writing, and
- (b) may be varied or revoked by subsequent guidance.]

**F107** Words in art. 33 heading substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(5)**; S.R. 2022/102, art. 2(b)

**F108** Words in art. 33(1) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(2)**; S.R. 2022/102, art. 2(b)

**F109** Art. 33(1A)(1B) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(3)**; S.R. 2022/102, art. 2(b)

**F110** 1979 NI 12

**F111** Art. 33(5) inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 147(4)**; S.R. 2022/102, art. 2(b)

*Article 34—Amendments*

*Article 35—Repeals*



## SCHEDULES

### F112F112 SCHEDULE 1

F112 Sch. 1 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(12), Sch. 7; S.R. 2009/114, art. 2

### SCHEDULE 2

Article 7(2).

#### PROVISIONS ARISING OUT OF REMOVAL OF CROWN IMMUNITIES FROM HEALTH AND [F114SOCIAL CARE] BODIES

F114 Words in Sch. 2 heading substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(a) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, art. 2

#### Part I—Amendments

### F115F115 PART II

#### TRANSITIONAL PROVISIONS

F115 Sch. 2 Pt. II repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 33, 34(3), Sch. 7; S.R. 2009/114, art. 2

#### 4. In this Part—

“the appointed day” means the day appointed for the coming into operation of paragraph (1) of Article 7;

“health and social services body” has the same meaning as in that Article.

#### 5.—(1) In any case where—

- (a) before the appointed day, a health and social services body or an HSS trust has made an application for a licence under Part II of the Medicines Act 1968 or any such application as is referred to in section 36 of that Act (applications for clinical trial and animal test certificates), and
- (b) the application was accompanied by a declaration under head (a) or head (b) of subparagraph (2), and
- (c) the application has not been determined before the appointed day,

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then, on and after the appointed day and until the application is determined, the health and social services body or HSS trust concerned shall be treated for all purposes as if it held a licence or, as the case may be, a certificate of the description applied for.

- (2) The declarations referred to in sub-paragraph (1)(b) are,—
  - (a) in the case of a health and social services body, that, at the date of the application, the body was carrying on activities which, after the appointed day, it would be unlawful to carry on except in accordance with a licence or certificate of the description applied for; and
  - (b) in the case of an HSS trust, that the trust has been established to assume responsibility for the ownership and management of a hospital or other establishment or facility and, at the date of the application, a health and social services body was carrying on at that hospital, establishment or facility activities which it is unlawful for the HSS trust to carry on except in accordance with a licence or certificate of the description applied for.

- (3) For the purposes of sub-paragraph (1), an application is determined when the licensing authority—
  - (a) grant a licence or, as the case may be, certificate to the applicant (whether or not in accordance with the application); or
  - (b) notify the applicant of their refusal to grant a licence or certificate on the application.

(4) Expressions used in sub-paragraphs (1) to (3) have the same meaning as in sections 18 to 22 of the Medicines Act 1968 (applications for, and grant of, licences), including, where applicable, any of those sections as applied by subsection (3) of section 36 of that Act in relation to applications falling within subsection (1) of that section.

.....

- 6.—(1) This paragraph applies if—
  - (a) before the appointed day, notice of any proposed development has been given to the Department of the Environment in accordance with arrangements relating to development by government departments; and
  - (b) the development relates to land which, at the time the notice was given, fell within Article 7(1)(a) or (b); and
  - (c) the proposed development has not been carried out before the appointed day.

(2) So far as relates to the carrying out of the development of which notice was given as mentioned in sub-paragraph (1)(a), for the purposes of the arrangements so mentioned and of the Planning (Northern Ireland) Order 1972,—

- (a) the carrying out of the development shall continue to be regarded as being by or on behalf of the Crown; and
- (b) so long as the interest of the Department in the land referred to in sub-paragraph (1)(b) continues on and after the appointed day to be held in fact by the Department or an HSS trust, that interest shall be regarded as continuing to be an interest of, or held on behalf of, the Crown.

(3) Expressions used in sub-paragraphs (1) and (2) have the same meaning as in the Planning (Northern Ireland) Order 1972.

.....

- 7.—(1) This paragraph applies to a tenancy—
  - (a) which was entered into before the appointed day; and
  - (b) which is of land which, immediately before the appointed day, was land falling within Article 7(1)(a) or (b).

**Status:** Point in time view as at 01/04/2022.

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(2) If and so long as the interest of the landlord under a tenancy to which this paragraph applies continues on and after the appointed day to belong in fact either to the Department or to an HSS trust, it shall be taken to belong to a government department for the purposes of Article 5(7)(b) of the Rent (Northern Ireland) Order 1978 (tenancy where landlord is government department not to be protected tenancy).

(3) Expressions used in sub-paragraphs (1) and (2) have the same meaning as in the Rent (Northern Ireland) Order 1978.

.....

**8.—**(1) If, immediately before the appointed day, approved work is proposed to be carried out by or on behalf of a Crown authority (whether or not in relation to a Crown building) the fact that, on or after the appointed day, the work may be carried out by or on behalf of a health and social services body or an HSS trust shall not prevent it continuing to be regarded for the purposes of the Building Regulations (Northern Ireland) Order 1979 as work carried out by a Crown authority.

(2) Subject to sub-paragraph (3), expressions used in sub-paragraph (1) have the same meaning as in Article 22 of the Building Regulations (Northern Ireland) Order 1979 (application to Crown).

(3) Any reference in sub-paragraph (1) to approved work is a reference to work in respect of which, before the appointed day, either a contract for carrying it out was entered into or all necessary design certificates were signed in accordance with arrangements relating to compliance with the substantive requirements of building regulations by Crown authorities.

.....

**9.—**(1) Without prejudice to the continuing validity on and after the appointed day of any fire certificate issued before that day in accordance with Article 49(3) of the Fire Services (Northern Ireland) Order 1984 (certain functions in relation to premises occupied or owned by the Crown exercisable by the Department of Economic Development instead of by the Fire Authority for Northern Ireland), any application made, notice issued or other thing done before the appointed day to or by the Department of Economic Development, or a person authorised by it, in relation to premises held, used or occupied by a health and social services body, shall be treated on and after that day as if made, issued or done to or by the Fire Authority for Northern Ireland, or an authorised member of the fire brigade.

(2) Expressions used in sub-paragraph (1) have the same meaning as in the Fire Services (Northern Ireland) Order 1984.

SCHEDULE 3

Article 10.

[<sup>F116</sup>HEALTH AND SOCIAL CARE TRUSTS]

**F116** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(c\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114, art. 2](#)

PART I

ORDERS UNDER ARTICLE 10(1)

**1.** Any reference in this Part to an order is a reference to an order under Article 10(1) establishing an [<sup>F117</sup>HSC trust] or any subsequent order under that provision amending or revoking a previous order.

**Status:** Point in time view as at 01/04/2022.

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**F117** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

2. The provisions made by an order shall be in conformity with any general provision made by regulations under Article 10(6).

3.—(1) Without prejudice to any amendment made by a subsequent order, the first order to be made in relation to any [<sup>F118</sup>HSC trust] shall specify—

- (a) the name of the trust;
- (b) the functions of the trust;
- (c) the number of executive directors and non-executive directors;
- (d) <sup>F119</sup> .....
- (e) the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and
- (f) if a scheme is to be made under Article 11, the relevant body which is to make the scheme.

(2) <sup>F120</sup> .....

(3) <sup>F121</sup> .....

**F118** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**F119** Sch. 3 para. 3(1)(d) repealed (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(13)(a), **Sch. 7**; S.R. 2009/114, **art. 2**

**F120** Sch. 3 para. 3(2) repealed (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(13)(a), **Sch. 7**; S.R. 2009/114, **art. 2**

**F121** Sch. 3 para. 3(3) repealed (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(13)(a), **Sch. 7**; S.R. 2009/114, **art. 2**

[<sup>F122</sup>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.]

**F122** Sch. 3 para. 3A substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), **Sch. 1 para. 148(2)**; S.R. 2022/102, art. 2(b)

4.—(1) An order may require a relevant body to make staff, premises and other facilities available to an [<sup>F123</sup>HSC trust] pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.

(2) An order making provision under this paragraph may make provision with respect to the time when the relevant body's functions under the provision are to come to an end.

**F123** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**Status:** Point in time view as at 01/04/2022.

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5.—(1) An order may provide for the establishment of an [F124HSC trust] with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the [F124HSC trust] shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.

(3) If an order makes the provision referred to in sub-paragraph (1), the order may require a relevant body to discharge such liabilities of the [F124HSC trust] as—

- (a) may be incurred during the period referred to in that sub-paragraph; and
- (b) are of a description specified in the order.

**F124** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

## PART II

### DUTIES, POWERS AND STATUS

#### [F125] Specific duties

6.—(1) An [F126HSC trust] shall carry out effectively, efficiently and economically the functions for the time being conferred on it by an order under Article 10(1) and by the provisions of this Schedule.

[F127(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.

(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

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(b) have regard to any guidance given to it under sub-paragraph (3).]

**F125** 2001 c. 3 (NI)

**F126** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

**F127** [Sch. 3 para. 6\(2\)-\(8\)](#) substituted for [Sch. 3 para. 6\(2\)](#) (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), [Sch. 1 para. 148\(3\)](#); S.R. 2022/102, [art. 2\(b\)](#)

[<sup>F128</sup>**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.]

**F128** [Sch. 3 para. 6A](#) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), [Sch. 1 para. 148\(4\)](#); S.R. 2022/102, [art. 2\(b\)](#)

[<sup>F129</sup>**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).]

**F129** [Sch. 3 para. 6B](#) inserted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), [Sch. 1 para. 148\(5\)](#); S.R. 2022/102, [art. 2\(b\)](#)

[<sup>F130</sup>**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

(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).]

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**F130** Sch. 3 para. 6C inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 148(6); S.R. 2022/102, art. 2(b)

7.—(1) For each financial year an [F<sup>131</sup>HSC trust] shall prepare and send to the Department an annual report in such form as may be determined by the Department.

(2) At such time or times as may be prescribed, an [F<sup>131</sup>HSC trust] shall hold a public meeting at which its audited accounts and annual report shall be presented.

(3) In such circumstances and at such time or times as may be prescribed, an [F<sup>131</sup>HSC trust] shall hold a public meeting at which such documents as may be prescribed shall be presented.

**F131** 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

8. An [F<sup>132</sup>HSC trust] shall furnish to the Department such reports, returns and other information, including information as to its forward planning, as, and in such form as, the Department may require.

**F132** 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

9.—(1) An [F<sup>133</sup>HSC trust] shall be liable to pay—

- (a) to the chairman and any non-executive director of the trust remuneration of an amount determined by the Department, not exceeding such amount as may be approved by the Department of Finance and Personnel;
- (b) to the chairman and any non-executive director of the trust such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel;
- (c) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.

(2) If an [F<sup>133</sup>HSC trust] so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Department with the approval of the Department of Finance and Personnel.

(3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

**F133** 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

### Specific powers

10. In addition to carrying out its other functions, an [F<sup>134</sup>HSC trust] may enter into [F<sup>135</sup>HSC contracts].

**F134** 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)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

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**F135** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(e\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

11. An [<sup>F136</sup>HSC trust] may undertake and commission research and make available staff and provide facilities for research by other persons.

**F136** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

12. An [<sup>F137</sup>HSC trust] may—

- (a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under the principal Order; and
- (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health and [<sup>F138</sup>social care].

**F137** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F138** 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\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

13. An [<sup>F139</sup>HSC trust] may enter into arrangements for the carrying out, on such terms as seem to the trust to be appropriate, of any of its functions [<sup>F140</sup>(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))] jointly with any relevant body, with another [<sup>F139</sup>HSC trust] or with any other body or individual.

**F139** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F140** Words in [Sch. 3 para. 13](#) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 148\(7\)](#); S.R. 2022/102, [art. 2\(b\)](#)

14. According to the nature of its functions, an [<sup>F141</sup>HSC trust] may make accommodation or services or both available for persons who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both), such charges as the trust may determine.

**F141** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

15. For the purpose of making additional income available in order better to perform its functions, an [<sup>F142</sup>HSC trust] shall have the powers specified in Article 3(2) of the Health and Medicines (Northern Ireland) Order 1988<sup>F143</sup> (extension of powers of the Department for financing [<sup>F144</sup>health care]).

**F142** 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\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F143** 1988 NI 24

**F144** 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](#)



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## General powers

**16.**—<sup>F145</sup>(1) Subject to Schedule 4, an <sup>F146</sup>HSC trust] shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—

- (a) to acquire and dispose of land and other property;
- (b) to enter into such contracts as seem to the trust to be appropriate;
- (c) to accept gifts of money, land or other property, including money, land or other property to be held on trust for the general or any specific purposes of the <sup>F146</sup>HSC trust] (including the purposes of any specific hospital or other establishment or facility<sup>F145</sup> at or from which services are provided] by the trust);

*Sub.#para. (d) rep. by 2001 c. 3 (NI)*

<sup>F145</sup>(2) An <sup>F146</sup>HSC trust] may employ such staff at it thinks fit.

(3) Subject to any directions given by the Department under paragraph 6, an <sup>F146</sup>HSC trust] may—

- (a) pay its staff such remuneration and allowances; and
- (b) employ them on such other terms and conditions,

as it thinks fit.]

**F145** 2001 c. 3 (NI)

**F146** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**17.**—(1) Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an <sup>F147</sup>HSC trust] may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.

(2) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an <sup>F147</sup>HSC trust] includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

**F147** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

## Status

**18.** An <sup>F148</sup>HSC trust] shall not be regarded as the servant or agent of the Crown or, except as provided by this Order or the Health and Personal Social Services (Northern Ireland Consequential Amendments) Order 1991<sup>F149</sup>, as enjoying any status, immunity or privilege of the Crown; and an <sup>F150</sup>HSC trust's] property shall not be regarded as property of, or property held on behalf of, the Crown.

**F148** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**F149** SI 1991/195

**Status:** Point in time view as at 01/04/2022.

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**F150** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

### PART III

#### SUPPLEMENTARY PROVISIONS

##### Re-imburement for health and personal social services work carried out otherwise than under HSS contract

19. <sup>F151</sup> .....

**F151** Sch. 3 para. 19 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(13)(b), **Sch. 7**; S.R. 2009/114, **art. 2**

20. In any case where an [<sup>F152</sup>HSC trust] provides goods or services for the benefit of an individual and—

- (a) the provision of those goods or services is not pursuant to an [<sup>F153</sup>HSC contract], and
- (b) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this paragraph by a direction made by the Department,

the trust shall be remunerated by the Department in respect of the provision of the goods or services in question at such rate or rates as the Department considers appropriate.

**F152** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**F153** 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)(e)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

##### Compulsory acquisition

21.—(1) An [<sup>F154</sup>HSC trust] may, for the purposes of its functions, acquire land compulsorily.

(2) Where an [<sup>F154</sup>HSC trust] desires to acquire land compulsorily it may apply to the Department for an order (in this paragraph referred to as a “vesting order”) vesting the land in the [<sup>F154</sup>HSC trust] and the Department may make a vesting order.

(3) Schedule 6 to the Local Government (Northern Ireland) Act 1972<sup>F155</sup> shall, subject to the modifications specified in sub-paragraph (6), apply for the purposes of the acquisition of land by means of a vesting order made under this paragraph in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

- (4) The power to make a vesting order under this paragraph 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 has been approved by a resolution of the Assembly.

**Status:** Point in time view as at 01/04/2022.

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(5) Nothing in this paragraph shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is to the knowledge of the Department any historic monument or archaeological object within the meaning of the Historic Monuments Act (Northern Ireland) 1971<sup>F156</sup>.

(6) The modifications of Schedule 6 to the Local Government (Northern Ireland) Act 1972<sup>F157</sup> referred to in sub-paragraph (3) are the following—

- (a) for any reference to a council or the council or the clerk of the council there shall be substituted a reference to an [F154HSC trust] or the [F154HSC trust] or the chief officer of the [F154HSC trust] respectively;
- (b) for any reference to the Ministry concerned there shall be substituted a reference to the Department;
- (c) for any reference to that Act there shall be substituted a reference to this Order;
- (d) any references to that Schedule shall be construed as references to that Schedule as modified by this sub-paragraph;
- (e) for any reference to a matter prescribed by regulations made by the Department of the Environment there shall be substituted a reference to a matter prescribed by regulations made by the Department of Health and Social Services;
- (f) in paragraphs 2(c) and 5(2) for the words “as may be prescribed” there shall be substituted the words “as appear to the [F154HSC trust] to have an interest in the matter”;
- (g) paragraph 19 shall be omitted.

(7) Where an [F154HSC trust] proposes to acquire land compulsorily under this paragraph, a person authorised in writing by the [F154HSC trust] may, on production if required of his credentials, at any reasonable time enter that land for the purpose of survey, valuation or examination.

(8) Paragraphs (2) to (8) of Article 49 of the principal Order shall apply in relation to the exercise of the power conferred by sub-paragraph (7) as it applies to the exercise of the power conferred by paragraph (1) of that Article; and in those paragraphs as so applied—

- (a) any reference to an authorised person shall be construed as a reference to a person authorised under sub-paragraph (7); and
- (b) any reference to the Department shall be construed as a reference to the [F154HSC trust].

**F154** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**F155** 1972 c. 9 (NI)

**F156** 1971 c. 17 (NI)

**F157** 1972 c. 9 (NI)

## Instruments, etc.

**22.** The fixing of the seal of an [F158HSC trust] shall be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the trust for that purpose and of one other director.

**F158** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**Status:** Point in time view as at 01/04/2022.

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## [<sup>F159</sup>Part 3A

### Directions that Certain Functions be exercised by others

**F159** Sch. 3 Pt. 3A inserted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), Sch. 1 para. 148(8); S.R. 2022/102, art. 2(b)

**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.

(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).]

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## PART IV DISSOLUTION

- 23.**—(1) The Department may by order dissolve an [F160HSC trust].
- (2) An order under this paragraph may be made—
- (a) on the application of the [F160HSC trust] concerned; or
  - (b) if the Department considers it appropriate in the interests of the health and [F161social care].
- (3) Except where it appears to the Department necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.

**F160** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

**F161** 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\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, [art. 2](#)

- 24.**—(1) If an [F162HSC trust] is dissolved under this Part, the Department may by order transfer or provide for the transfer to—
- (a) the Department,
  - (b) a relevant body,
  - (c) another [F162HSC trust],

of such of the property, rights and liabilities of the [F162HSC trust] which is dissolved as in the Department's opinion is appropriate; and any such order may include provisions corresponding to those of Article 13.

[F163(1A) The Department must exercise its powers under sub-paragraph (1) so as to ensure that all the liabilities of the HSC trust are transferred.]

(2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the [F162HSC trust] which is dissolved; and such an order may include provisions corresponding to those of Articles 11 and 12 including provision for the making of a scheme by such relevant body or other body as may be specified in the order.

(3) No order shall be made under this paragraph until after the completion of such consultation as may be prescribed.

**F162** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

**F163** [Sch. 3 para. 24\(1A\)](#) inserted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 13\(13\)\(c\)](#); S.R. 2009/114, [art. 2](#)

**25.** Without prejudice to the generality of paragraph 24, if an [F164HSC trust] is dissolved under this Part, the Department or such other [F164HSC trust] or relevant body as the Department may direct shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 9(2) or paragraph 17, would otherwise have been the responsibility of the trust which has been dissolved.

**Status:** Point in time view as at 01/04/2022.

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**F164** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

**26.** An [<sup>F165</sup>HSC trust] may not be dissolved or wound up except in accordance with this Part.

**F165** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

## SCHEDULE 4

Article 14(9).

### FINANCIAL PROVISIONS RELATING TO [<sup>F166</sup>HSC TRUSTS]

**F166** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

#### Borrowing

**1.—(1)** Subject to [<sup>F167</sup> any direction given by the Department under paragraph 6 of Schedule 3, to] the provisions of this paragraph and to any limit imposed under the following provisions of this Schedule, for the purpose of its functions an [<sup>F168</sup>HSC trust] may borrow (both temporarily, by way of overdraft, and longer term) from the Department or from any other person.

**(2)** An [<sup>F168</sup>HSC trust] may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.

[<sup>F167</sup>(3) It shall be for the Department, with the consent of the Department of Finance and Personnel, to determine the terms of any loan made by it to an [<sup>F168</sup>HSC trust] (including terms as to the payment of interest, if any).]

**F167** 2001 c. 3 (NI)

**F168** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

#### Guarantees of borrowing

**2.—(1)** The Department may guarantee, in such manner and on such conditions as, with the approval of the Department of Finance and Personnel, it considers appropriate, the repayments of the principal of and the payment of interest on any sums which an [<sup>F169</sup>HSC trust] borrows from a person other than the Department.

**(2)** Immediately after a guarantee is given under this paragraph, the Department shall lay a statement of the guarantee before the Assembly.

**(3)** Where any sum is issued for fulfilling a guarantee so given, the Department shall lay before the Assembly a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.

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(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the [F169HSC trust] concerned shall make to the Department, at such times and in such manner as the Department may from time to time direct,—

- (a) payments of such amounts as the Department with the consent of the Department of Finance and Personnel so directs in or towards repayment of the sums so issued; and
- (b) payments of interest, at such rates as the Department with the consent of the Department of Finance and Personnel so directs, on what is outstanding for the time being in respect of sums so issued.

**F169** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### Limits on indebtedness

3.—(1) The aggregate of all sums borrowed by [F170HSC trusts] established under this Order shall not exceed £150 million or such other sum not exceeding £300 million as may be specified by order made subject to negative resolution by the Department with the consent of the Department of Finance and Personnel.

*Sub.#para. (2) rep. by 2001 c. 3 (NI)*

**F170** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### Additional public dividend capital

4.—(1) If the Department, with the consent of the Department of Finance and Personnel, considers it appropriate to do so, it may, instead of making a loan to an [F171HSC trust] under paragraph 1, pay an amount to the trust as public dividend capital.

*Sub.#para. (2) rep. by 2001 c. 3 (NI)*

**F171** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### Surplus funds

5. If it appears to the Department that any[F172 sum held by an [F173HSC trust] otherwise than as trustee] is surplus to its foreseeable requirements, the trust shall, if the Department with the approval of the Department of Finance and Personnel and after consultation with the trust so directs, pay[F172 that sum] into the Consolidated Fund.

**F172** 2001 c. 3 (NI)

**F173** 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\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### [F174Investment

6. An [F175HSC trust] shall have power to invest money held by it in any investments, including investments which do not produce income, specified in directions under paragraph 6 of Schedule 3, but nothing in this paragraph applies in relation to money held by an [F175HSC trust] as trustee.]

**Status:** Point in time view as at 01/04/2022.

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**F174** 2001 c. 3 (NI)

**F175** 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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

#### *Schedule 5—Amendments*

#### *Schedule 6—Repeals*



**Status:**

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