
STATUTORY INSTRUMENTS

1991 No. 194

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

Health and Social Services trusts

Health and Social Services trusts

10.—(1) Subject to paragraph (2), the Department may by order establish bodies, to be known as Health and Social Services trusts (in this Order referred to as HSS trusts),—

- (a) to assume responsibility, in accordance with this Order, for the ownership and management of hospitals or other establishments or facilities which were previously managed or provided by a relevant body; or
- (b) to provide and manage hospitals or other establishments or facilities.

(2) In any case where the Department is considering whether to make an order under paragraph (1) establishing an HSS trust, it shall consult the Health and Social Services Council for the area in which the hospital, establishment or other facility concerned is, or is to be, situated and such other persons and bodies as it considers appropriate.

(3) In this Article, Articles 11 to 13 and Schedule 3 “a relevant body” means—

- (a) a Health and Social Services Board;
- (b) the Agency; or
- (c) a special agency.

(4) Every HSS 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(1) applies.

(5) The functions specified in an order under paragraph (1) shall include such functions as the Department considers appropriate in relation to the provision of services by the trust for a relevant body.

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

- (a) the qualifications for and the tenure of office of the chairman and directors of an HSS 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 HSS 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 HSS 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 HSS trusts.

(8) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 3 may be exercised only to the extent that—

- (a) the exercise will not interfere with the duties of the trust to comply with directions under paragraph 6 of that Schedule; and
- (b) the exercise will not to any significant extent interfere with the performance by the trust of its obligations under any HSS contract or any obligations imposed by an order under paragraph (1).

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

Transfer of staff to HSS trusts

11.—(1) Subject to paragraph (5), this Article applies to any person who, immediately before an HSS 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 HSS 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 HSS trust on its operational date; and
- (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 HSS trust.

(5) In any case where—

- (a) an order under Article 10(1) provides for the establishment of an HSS 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 HSS 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 HSS 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.

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 HSS 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 HSS 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 HSS 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
- (d) for the purposes of the statutory provisions listed in paragraph (3), the number of hours normally worked, or, as the case may be, the hours for which the employee is employed in any week under either of those contracts shall be taken to be the total of the hours normally worked or, as the case may be, for which he is employed under the two contracts taken together.

(3) The statutory provisions referred to in paragraph (2)(d) are—

- (a) section 4(9) to (11A) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(2);

(b) Schedule 1 to that Act as it applies for the purposes of that Act and of any other statutory provision; and

(c) Article 49(5) to (8) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(3).

(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 HSS trust,—

(a) an employee has contractual rights against an HSS trust to benefits in the event of his redundancy, and

(b) he also has statutory rights against the trust under Parts II to IV of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (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 Parts II to IV.

Transfer of assets and liabilities to HSS trusts

13.—(1) The Department may by order transfer or provide for the transfer to an HSS 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 HSS trust otherwise than under paragraph (1).

(4) Stamp duty shall not be chargeable in respect of any transfer to an HSS 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 HSS 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 HSS trust specified in the order shall be conclusive evidence of that fact for all purposes.

(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.

Originating capital debt of, and other financial provisions relating to, HSS trusts

14.—(1) Each HSS trust shall have an originating capital debt 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 originating capital debt of an HSS 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 HSS trust’s originating capital debt shall be deemed to have been issued out of moneys appropriated by Measure and shall constitute an asset of the Consolidated Fund.

(4) In accordance with an order under paragraph (1), an HSS trust’s originating capital debt shall be divided between—

- (a) a loan (in this Part referred to as an HSS trust’s “initial loan”); and
- (b) public dividend capital.

(5) Interest shall be paid on an HSS trust’s initial loan at such variable or fixed rates and at such times as the Department may determine.

(6) The other terms of the initial loan shall be such as the Department may determine; and, in the event of the early repayment of the initial loan, the terms may require the payment of a premium or allow a discount.

(7) The Department may determine the terms on which any public dividend capital forming part of an HSS trust’s originating capital debt is to be treated as having been issued, and, in particular, may determine the dividend which is to be payable at any time on any public dividend capital.

(8) An order under paragraph (1) and a determination under paragraph (2), (5), (6) 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 HSS 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 HSS trusts.

Financial obligations of HSS trusts

15.—(1) Every HSS 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 HSS 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 HSS trusts generally, or to a particular HSS trust or to HSS trusts of a particular description.

Trust funds and trustees for HSS trusts

16.—(1) The Department may by order provide for the appointment of trustees for an HSS 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 HSS trust (including the purposes of any specific hospital or other establishment or facility which is owned and managed by the trust).

- (2) An order under paragraph (1) may—
 - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment;
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Department);
 - (c) 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
 - (d) 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 HSS trust—
 - (a) the Department may by order transfer or provide for the transfer of endowments or other property held on trust from the HSS trust to the trustees so appointed; and
 - (b) 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 HSS trust and,

accordingly, in relation to such endowments or other property, references in Article 13 to an HSS 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.

- (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 HSS trust or the trustees for an HSS trust under Article 13; or
 - (ii) to the trustees for an HSS trust under paragraph (3)(a), having previously been transferred to the HSS trust under Article 13,

the said Schedule 14 shall apply to the use of that endowment by the HSS trust or, as the case may be, the trustees for the HSS 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 HSS trust or the trustees for an HSS trust under Article 13; or
 - (ii) to the trustees for an HSS trust under paragraph (3)(a), having previously been transferred to the HSS trust under Article 13,

the said Article 81 shall apply to the administration of that property by the HSS trust or, as the case may be, the trustees for the HSS 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.