

2005 No. 44 (C. 4)

HEALTH AND PERSONAL SOCIAL SERVICES

**The Health and Personal Social Services (Quality,
Improvement and Regulation) (2003 Order)
(Commencement No. 3 & Transitional Provisions) Order
(Northern Ireland) 2005**

Made - - - - - 17th February 2005

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred on it by Article 1(3) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(a), and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Health and Personal Social Services (Quality, Improvement and Regulation) (2003 Order) (Commencement No. 3 & Transitional Provisions) Order (Northern Ireland) 2005.

(2) In this Order, unless the context otherwise requires –

“Board” means the Health and Social Services Board;

“Childrens home” has the same meaning as in Article 9 of the 2003 Order;

“Voluntary home” has the same meaning as in Article 74(1) of the Children (Northern Ireland) Order 1995(b);

“the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“the 1992 Order” means the Registered Homes (Northern Ireland) Order 1992(c);

“the 1971 Act” means the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971(d);

“the 1995 Order” means the Children (Northern Ireland) Order 1995.

Appointed day

2. Subject to the remaining provisions of this Order, 1st March 2005 is the appointed day for the coming into operation of the provisions of the 2003 Order specified in Schedule 2, for the purposes only of authorising the making of regulations.

(a) S.I. 2003/431 (N.I. 9)
(b) S.I. 1995/755 (N.I. 2)
(c) 1992/3204 (N.I. 20)
(d) 1971 c. 32

3. 1st April 2005 is the appointed day for the coming into operation of the provisions of the 2003 Order as described in Schedule 1, in so far as they are not already in operation.

Deemed registration of certain establishments and agencies

4. Where on the commencement date a person who carries on or manages an establishment or agency to which any of the paragraphs of Article 5 applies, that person is to be treated for all purposes as if he had been registered under Part III of the 2003 Order on that date.

Persons who carry on or manage an establishment or agency are deemed to be registered

5.—(1) This Article applies to:

- (a) a person who carries on or manages a residential care home in respect of which he was immediately before the commencement date registered under the 1992 Order;
- (b) a person who carries on or manages a nursing home in respect of which he was immediately before the commencement date registered under the 1992 Order;
- (c) a person who carries on or manages an establishment which was immediately before the commencement date registered under the 1995 Order as a childrens home or a voluntary home;
- (d) a person carrying on an establishment which was at any time before the commencement date inspected by a person authorised to do so by –
 - (i) the Department, as if the establishment was, or formed part of a residential care home in respect of which the person was required to be registered under the 1992 Order; or
 - (ii) the Department, as if the establishment was or formed part of a nursing home in respect of which the person was required to be registered under the 1992 Order; or
 - (iii) the Department as if the establishment was, or formed part of a children's home or voluntary home which was required to be registered under the 1995 Order.

(2) This paragraph applies to a person carrying on an independent hospital or an independent clinic, which is substantially the same as a nursing home, in respect of which he was, immediately before the commencement date, registered under the 1992 Order as a person carrying on a nursing home and on the commencement date will be carrying on or managing an independent hospital or clinic.

(3) This paragraph applies to a person carrying on a nursing agency in respect of which he was, immediately before the commencement date, the holder of a licence issued under the 1971 Act.

Duration of Deeming

6. Where a person is deemed to be registered under Article 4, registration shall cease to have effect –

- (a) where the person carrying on or managing an establishment or agency has before 1st October 2005 made an application for registration under Article 13(1) of the 2003 Order, on 1st April 2006; or
- (b) in any other case, on 1st October 2005.

Certificates, Notices and Licences

7.—(1) Where a person who carries on or manages an establishment or agency is, by virtue of Article 4, to be treated as if he had been registered under the 2003 Order, and –

- (a) a certificate has been issued to him under Article 6(4) or 19(4) of the 1992 Order; or
- (b) a notice has been given to him under Articles 80(6) or 96(6) of the 1995 Order; or
- (c) a licence has been issued to him under section 12 of the 1971 Act,

that certificate, notice or licence shall be treated for the purposes of the 2003 Order as if it was the certificate issued under Article 14 of that Order.

(2) Where no such certificate, notice or licence has been issued as specified in paragraph (1), Article 28 of the 2003 Order shall not apply to a person who carries on or manages an establishment or agency, until the Regulation and Improvement Authority has issued a certificate of registration under that Order.

Continuation of existing conditions

8. Where a person carrying on or managing an establishment or agency is treated as having been registered by virtue of Article 4, any conditions –

- (a) attached to registration of the establishment or agency specified in Article 5 (1)(a), (b), (c) or (2); or
- (b) attached to the licence in respect of a nursing agency specified in Article 5(3),

as the case may be shall, so far as they are capable of being conditions to which registration under the 2003 Order is subject, have effect from the commencement date as if they were such conditions which had for the purposes of Article 20 of that Order been agreed in writing between the Regulation and Improvement Authority and the person who carries on or manages the establishment or agency.

Notices of Cancellation, Variation or Additional Condition under the 1992 Order [Residential Care Homes]

9.—(1) This Article applies –

- (a) where a person who carries on or manages an establishment or agency which is a residential care home to which Article 5(1)(a) applies and
- (b) where the Board with which the person was immediately before the commencement date registered, has before that date given that person notice –
 - (i) under Article 11(4)(a) of the 1992 Order of a proposal to cancel the registration; or,
 - (ii) under Article 11(4)(b) or (c) of that Order of a proposal to impose an additional condition or to vary an existing condition,

and that imposition, variation or cancellation as the case may be has not taken effect before that date.

(2) Where this Article applies –

- (a) the 1992 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;
- (b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect, in relation to the residential care home to which paragraph (1)(a) applies, from the date on which it was imposed or varied as the case may be, as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28 days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that Article; and
- (c) where the person's registration is cancelled, registration under the 2003 Order by virtue of Article 4 of this Order, shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies, has before the commencement date, applied to the Board specified in paragraph (1)(b) under Article 7(4) of the 1992 Order to impose an additional condition or to vary an existing condition and the Board has not by that date given notice under Article 11(4)(b) of the 1992 Order, the application shall be treated as an application to the Regulation and Improvement Authority, made on that date in accordance with the requirements of Article 16 of the 2003 Order.

Notices of Cancellation, Variation or Additional Condition under the 1992 Order [Nursing Homes]

10.—(1) This Article applies where –

- (a) a person carries on or manages a nursing home –

- (i) to which Article 5(1)(b) applies; or
- (ii) an independent hospital or independent clinic to which Article 5 (2) applies; and
- (b) the Board, with which the person was immediately before the commencement date registered under the 1992 Order, has sent that person notice –
 - (i) under Article 24(4)(a) of the 1992 Order of a proposal under Article 24(4)(a) to cancel that registration; or
 - (ii) under Article 24(4)(b) or (c) of the 1992 Order of a proposal to vary an existing condition or impose an additional condition,

and that cancellation, variation or imposition, as the case may be has not taken effect before that date.

- (2) Where this Article applies –
 - (a) the 1992 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;
 - (b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect, in relation to the nursing home to which paragraph (1)(a) applies, from the date on which it was imposed or varied as the case may be, as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28 days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that section; and
 - (c) where the person’s registration is cancelled, registration under the 2003 Order by virtue of Article 4 of this Order shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies has before the commencement date applied to the Board, specified in paragraph (1)(b) under Article 20(4) of the 1992 Order to impose an additional condition or to vary an existing condition and the Board has not by that date, given notice under Article 24 (4) of the 1992 Order, the application shall be treated as an application to the Regulation and Improvement Authority, made on that date in accordance with Article 16 of the 2003 Order.

Notices of Cancellation, Variation or Additional Condition under the 1995 Order [Children’s Homes]

- 11.—**(1) This Article applies –
- (a) where a person who carries on or manages an establishment which is a children’s home to which Article 5(1)(c) applies;
 - (b) where the Board with which the establishment was registered immediately before the commencement date, has before that date, given that person notice –
 - (i) under Article 83(4)(a) or 99(4)(a) of the 1995 Order of a proposal to cancel the registration; or
 - (ii) under Article 83(4)(b) or 99(4)(c) of that Order of a proposal to vary or cancel any existing condition or impose an additional condition;

and that imposition, variation or cancellation as the case may be has not taken effect before that date.

- (2) Where this Article applies –
 - (a) the 1995 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;
 - (b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect in relation to the children’s home to which paragraph (1)(a) applies from the date on which it was imposed or varied as the case may be as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28 days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that Article; and

(c) where the person's registration is cancelled, registration under the 2003 Order by virtue of Article 4 shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies has before the commencement date applied to the Board specified in paragraph (1)(b), under Article 81(2) or 97(2) of the 1995 Order, to impose an additional condition or to vary an existing condition and the Board has not by that date given notice under Article 83 or 99 of the 1995 Order, the application shall be treated as an application to the Regulation and Improvement Authority made on that date, in accordance with Article 16 of the 2003 Order.

Proposals under the 1971 Act [Nursing Agencies]

12.—(1) This Article applies where –

- (a) a person who carries on or manages a nursing agency to which Article 5(3) applies, and
- (b) immediately before the commencement date held a licence under Section 12 of the 1971 Act and the Department has, before that date, given notice of its intention to revoke that licence; and

before that date the period of 14 days referred to in Section 13(2) has not expired.

(2) Where this Article applies –

- (a) the 1971 Act shall continue in force for the purpose of determining whether the licence is to be revoked; and
- (b) where the licence is so revoked, registration under the 2003 Order by virtue of Article 4 shall cease to have effect.

Pre-commencement applications for registration

13.—(1) Where before the commencement date a person, other than a person to whom Article 5(1) or 7(1) applies, has made an application to –

- (a) a Board under –
 - (i) the 1992 Order for registration in respect of a residential care home, nursing home; or
 - (ii) the 1995 Order for registration in respect of a voluntary home or children's home;
- (b) the Department under the 1971 Act for a licence authorising that person to carry on a nursing agency,

the application shall, unless it is one to which paragraph (2) applies, be treated as if it had been made to the Regulation and Improvement Authority on that date in accordance with Article 13 of the 2003 Order, for registration.

(2) This paragraph applies to an application specified in paragraph (1) where –

- (a) the Board has under Article 11(3) or 24(3) of the 1992 Order given notice of a proposal to refuse an application for registration under that Order;
or
- (b) the Board has under Article 83(3) or 99(3) of the 1995 Order given notice of a proposal to refuse an application for registration under that Order;
or
- (c) the Department has given notice of its intention to refuse an application for a licence to carry on a nursing agency under the section 13 of the 1971 Act;

(3) Where paragraph (2) applies –

- (a) the existing law shall continue in force for the purpose of determining whether the application is to be granted; and
- (b) where the application is so granted, it shall be treated as if it had been granted by the Regulation and Improvement Authority.

(4) In this Article –

“existing law” means the transferred provision under which the application was made.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety
on 17th February 2005.

(L.S.)

N. McCann
Senior Officer of the Department of Health

SCHEDULE 1

PROVISIONS OF THE ORDER COMING INTO OPERATION ON 1st APRIL 2005

<i>Provision of the Order</i> Column 1	<i>Subject Matter</i> Column 2	<i>Purposes</i> Column 3
Article 4	General duties in relation to provision of services	All purposes.
Article 5	Advice and information about services	All purposes.
Article 7	Annual Report	All purposes.
In Article 8 – Paragraphs (1)(a), (c), (d), (e), (f) and (h). Paragraphs (2)(c), (d) and (f). Paragraphs(3) and (4).	Regulated establishments and agencies: general interpretation	All purposes.
Articles 9 to 14	Establishments and Registration	All purposes.
In Article 15 Paragraphs (1), (2)(a) to (d) and (3)	Cancellation of registration	All purposes.
Articles 16 to 33 inclusive	Registration – applications, regulations, appeals, offences, annual returns etc	All purposes.
Article 35	Role of the Regulation and Improvement Authority	All purposes.
In Article 38 Paragraph (4)	Statements of minimum standards	All purposes.
Article 39	Improvement notices	All purposes.
In Article 40 Paragraphs (1), (2) and (3)(a), (3)(b)	Power to require information and power of entry and inspection	All purposes.
(3)(c) to (e) , (4) to (7)		In so far as it relates to the requirements under regulations under Part III.
Articles 41 to 43	Inspections and Disclosure of information	All purposes.
Article 44	The Care Tribunal	All purposes.
Article 45	Arrangements for provision of accommodation outside Northern Ireland	All purposes.
Article 49	Transitional Provisions and Savings	For the purpose only of commencing paragraph 3 of Schedule 3.
Article 50	Amendments and Repeals	For the purposes of commencing certain provisions in Schedules 4 and 5.
In Schedule 2	The Care Tribunal	All purposes.
In Schedule 3 Paragraph (3)	Saving for amendments	All purposes
In Schedule 4	Amendments	In so far as it relates to – The Health and Personal Social Services (Northern Ireland) Order 1972(a);

(a) 1972/1265 (N.I. 14)

<i>Provision of the Order</i> Column 1	<i>Subject Matter</i> Column 2	<i>Purposes</i> Column 3
In Schedule 5	Repeals	<p>The Mental Health (Northern Ireland) Order 1986(a); The Adoption (Northern Ireland) Order 1987(b) only in so far as it relates to amendments to Article 33(2)(a)(ii) of that Order); The Disabled Persons (Northern Ireland) Act 1989(c); The Children (Northern Ireland) Order 1995, except in so far as it applies to amendments to Article 149(5); The Commissioner for Complaints (Northern Ireland) Order 1996(d); The Health and Personal Social Services Act (Northern Ireland) 2001(e); The Justice (Northern Ireland) Act 2002(f); The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(g).</p> <p>In so far as it relates to – The Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971; The Nurses, Midwives and Health Visitors Act 1979(h); The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(i); The Registered Homes (Northern Ireland) Order 1992; The Children (Northern Ireland) Order 1995; The Arbitration Act 1996(j); The Nurses Midwives and Health Visitors Act 1997(k); The Health and Personal Social Services Act</p>

- (a) S.I. 1986/595 (N.I. 4)
- (b) S.I. 1987 (N.I. 22)
- (c) 1989 (c. 10)
- (d) 1996 No. 1297 (N.I. 7)
- (e) 2001 c. 3 (N.I.)
- (f) 2002 c. 26
- (g) S.I. 2003/417 (N.I. 4)
- (h) 1979 c. 36
- (i) 1981 No. 839 (N.I. 20)
- (j) 1996 c. 23
- (k) 1997 c. 24

<i>Provision of the Order</i> Column 1	<i>Subject Matter</i> Column 2	<i>Purposes</i> Column 3
		(Northern Ireland) 2001; The Justice (Northern Ireland) Act 2002; The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

SCHEDULE 2

PROVISIONS OF THE ORDER COMING INTO OPERATION ON 1st MARCH 2005 FOR THE PURPOSES ONLY OF THE MAKING OF THE REGULATIONS.

<i>Provision of the Order</i> Column 1	<i>Subject Matter</i> Column 2	<i>Purposes</i> Column 3
Articles 9 to 11, 13, 15 to 17, 23, 25, 30 to 33, 40 and 44	Establishments, Registration, Power to require information and entry and inspection	For the purposes of authorising the making of regulations

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order brings into operation on 1st April 2005, further provisions of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (“the 2003 Order”).

Regulation 2 and Schedule 1 set out the provisions of the 2003 Order which are to come into operation on 1st April 2005. Regulation 3 and Schedule 2 set out the provisions of the Order which are to come into operation on 1st March 2005 for purposes of exercising powers to make regulations.

The commencement of these Articles includes a duty on the Regulation and Improvement Authority to keep the Department informed about the provision of services, including their availability and quality and to encourage improvement in the quality of services (Article 4) and advice to the Department on standards and provision of these services (Article 5). The Regulation and Improvement Authority is required to produce an annual report to the Department (Article 7). This Order commences provision of powers to the Regulation and Improvement Authority from 1st April 2005 for regulation (Articles 8, 9, 10 and 11 and 23) and registration (Articles 12 to 21) of children’s homes; independent clinics; independent hospitals; nursing homes; residential care homes; independent medical agencies and nursing agencies (Articles 8, 9, 10 and 11 and Article 23) and right of appeal to, and provision for the Care Tribunal (Articles 22, 44 and Schedule 2).

Provision for offences and proceedings (Articles 24 to 29) are also commenced, including the taking into account of minimum standards in the making of any decision by the Regulation and Improvement Authority to cancel registration, in proceedings on appeal and in any proceedings for an offence (Article 38 (4)).

Power is provided to issue **Improvement Notices** to persons registered under Part III of the Order, HSS Boards or Trusts or special agencies (Article 39), and power to require **information** and power of **inspection** (Articles 40, 41, 42) are commenced.

Articles 4 to 13 of this Order contain transitional arrangements. Article 4 provides for certain persons carrying on or managing existing establishments or agencies, which are either registered under the pre-commencement statutory regime or which are inspected as if that regime applied, to be treated as already registered under Part III of the Order. Article 6 provides for the period of deeming to apply for six months and, where the person carrying on or managing the establishment or agency has applied to the Regulation and Improvement Authority within that period for registration under the 2003 Order, a further six months. Under Article 7, where a person is deemed to be registered under the 2003 Order by virtue of this Order, any existing certificate of registration, notice or licence is to be treated as if it were issued under Article 14 of the Order. Where there is no certificate, notice or licence, the requirement to display is disapplied until a certificate notice or licence is issued. Where a service is deemed to have been registered by virtue of this Order, Article 8 provides that any existing conditions of registration are treated as if they were agreed conditions of registration under the 2003 Order. Articles 9 to 12 deal with the situation where the person carrying on an establishment or agency is deemed to be registered under the 2003 Order but the original registration or licence has proposed to cancel the registration or to impose or vary a condition of registration. In such cases the pre-commencement law is preserved for purposes of determining whether proposed action is to be taken and, where it is, the outcome is to be treated as if it had been reached by the Regulation and Improvement Authority under the 2003 Order. Article 13 preserves the pre-commencement law for purposes of determining applications for registration under the law which have not been dealt with before 1st April 2005. Once determined by the original registration or licensing authority, the result is to be treated as if the decision had been made by the Regulation and Improvement Authority.

Schedule 1 of this Order commences amendments in Schedule 4 of the 2003 Order, not previously commenced in the earlier Commencement Orders with the exception of certain amendments to The Adoption (Northern Ireland) Order 1987, the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 and the Children (Northern Ireland) Order 1995, which are to be commenced at a later date.

Schedule 2 of this Order commences the repeals in Schedule 5 of the 2003 Order, with the exception of repeals to the Adoption (Northern Ireland) Order 1987 and the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 which are to be repealed at a later date.

NOTES AS TO EARLIER COMMENCEMENTS

The following provisions of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 were brought into operation by the Health and Personal Social Services (Quality, Improvement and Regulation) (2003 Order) (Commencement No. 1) Order (Northern Ireland) 2003 (No. 239 c. 18) on 25th April 2003:

Article 34 [Duty of Quality];

Article 46 [Rules regarding courses for persons who are or who wish to become social workers]; and

Article 47 [Arrangements for provision of pharmaceutical services by pharmacists];

Further provisions were brought into operation by the Health and Personal Social Services (Quality, Improvement and Regulation) (2003 Order) (Commencement No. 2) Order (Northern Ireland) 2003 on 1st September 2003 (No. 348 c. 26));

Article 3 and Schedule 1; [the Regulation and Improvement Authority];

Article 6; [Regulations and directions];

Article 38 (1), (2) and (3) [Statements of minimum standards];

Article 48; [Regulations orders and directions]; and

Article 50 (1) and Schedule 4 in so far as they relate to amendments to the Superannuation (Northern Ireland) Order 1972 and the Northern Ireland Assembly Disqualification Act 1975.

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