

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

## NORTHERN IRELAND

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

*Made*

*5th February 1991*

*Coming into operation in accordance with Article 1(2) and (3)*

At the Court at Buckingham Palace, the 5th day of February 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

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

#### **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.

(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.

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(2) 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(3);
- “services” includes services of any description, whether or not being services under the principal Order.

(3) Article 2(2) of the principal Order (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

## Health and social services bodies

### Constitution of Health and Social Services Boards

3.—(1) Schedule 1 to the principal Order shall be amended in accordance with paragraphs (2) to (7).

(2) For paragraph 3 (constitution of Health and Social Services Board) there shall be substituted the following paragraph—

“3.—(1) A Health and Social Services Board shall consist of—

- (a) a chairman appointed by the Head of the Department;
- (b) a prescribed number of persons appointed by the Head of the Department;
- (c) the chief officer of the Board;
- (d) such other officers as may be prescribed; and
- (e) not more than a prescribed number of other officers of the Board appointed by the chairman and the members specified in heads (b) and (c).

(2) Except in so far as regulations otherwise provide, no person who is an officer of the Board may be appointed under sub-paragraph (1)(a) or (b).

(3) Subject to sub-paragraph (4), regulations may provide that all or any of the persons appointed under sub-paragraph (1)(b) must fulfil prescribed conditions or hold posts of a prescribed description.

(4) In the case of a prescribed Board, at least one of the persons appointed under sub-paragraph (1)(b) must hold a post in a university with a medical or dental school.”.

(3) For paragraph 4 (tenure of office) there shall be substituted the following paragraph—

“4.—(1) The term of office of members of a Health and Social Services Board appointed under paragraph 3(1)(a), (b) or (e) shall be four years or such other period as may be determined by the Head of the Department at the time the appointments are made.

(2) A member of a Health and Social Services Board specified in paragraph 3(1)(c), (d) or (e) shall—

(a) if he ceases to hold the qualifying office, cease to be a member of the Board;

(b) if he is suspended from the qualifying office, be suspended from membership of the Board for so long as he remains suspended from that office.

(3) In sub-paragraph (2) "the qualifying office" in relation to a member of a Health and Social Services Board means the office under the Board which he held at the time he became a member of the Board."

(4) For paragraph 5 (resignation, removal or death of member) there shall be substituted the following paragraph—

"5.—(1) A member of a Health and Social Services Board appointed under paragraph 3(1)(a) or (b)—

(a) may resign his membership by serving notice on the Head of the Department;

(b) may be removed from office by the Head of the Department.

(2) A member of a Health and Social Services Board appointed under paragraph 3(1)(e) may be removed from office by the chairman and members specified in paragraph 3(1)(b) and (c).

(3) Where any member of a Health and Social Services Board—

(a) is absent from the meetings of the Board for more than six months consecutively, except for an approved reason;

(b) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or

(c) is convicted of an indictable offence, the Board shall forthwith, by resolution, declare the office to be vacant and shall notify that fact in such manner as it thinks fit, and thereupon the office shall become vacant.

(4) In sub-paragraph (3)(a) "approved reason" means a reason approved—

(a) in the case of members appointed under paragraph 3(1)(e), by the chairman and the members specified in paragraph 3(1)(b) and (c);

(b) in the case of any other member, by the Department.

(5) Where the place of a member specified in paragraph 3(1)(a), (b) or (e) becomes vacant before the expiration of his term of office whether by death, resignation or otherwise, the vacancy shall be filled by appointment—

(a) in the case of a member specified in paragraph 3(1)(a) or (b), by the Head of the Department;

(b) in the case of a member specified in paragraph 3(1)(e), by the chairman and the members specified in paragraph 3(1)(b) and (c); and any person so appointed shall hold office for the remainder of the term of office of the former member."

(5) In paragraph 8(3) (committees) the words “, so however that a majority of the members of the committee shall be members of the Board” shall cease to have effect.

(6) For paragraph 13 (the seal) there shall be substituted the following paragraph—

“13. The seal of a Health and Social Services Board shall be authenticated by the signatures of—

(a) at least one member of the Board appointed under paragraph 3(1)(a) or (b); and

(b) the chief officer of the Board.”.

(7) After paragraph 14 there shall be added the following paragraph—

“15. Regulations may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Health and Social Services Board 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.”.

(8) Any person who immediately before this Article comes into operation is a member of a Health and Social Services Board shall on its coming into operation cease to be such a member, but shall be eligible to become a member of the Board as constituted under Schedule 1 to the principal Order as amended by this Article.

#### **Health and Social Services Councils**

4.—(1) The Department shall establish a council, to be known as a Health and Social Services Council, for the area of each Health and Social Services Board.

(2) Schedule 1 shall have effect in relation to Health and Social Services Councils.

(3) District committees established under Article 20 of the principal Order are hereby abolished.

#### **Local representative committees**

5. In Article 55 of the principal Order (local representative committees) for paragraph (1) there shall be substituted the following paragraph—

“(1) Where—

(a) a Health and Social Services Board is satisfied as respects a committee formed for its area; or

(b) two or more Health and Social Services Boards are satisfied as respects a committee formed for an area which comprises the areas of those Boards, that the committee is representative—

(i) of the medical practitioners of that area, or

(ii) of the dental practitioners of that area, or

(iii) of the ophthalmic medical practitioners of that area, or

(iv) of the ophthalmic opticians of that area, or

(v) of the persons providing pharmaceutical services in that area, the Board or, as the case may be, the Boards may recognise that committee.”.

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

6. The Northern Ireland Health and Social Services Training Council established under Article 28 of the principal Order is hereby abolished.

### **Removal of Crown immunities**

7.—(1) Subject to the following provisions of this Article, on and after the day appointed for the coming into operation of this paragraph, no health and social services body shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and so far as concerns land in which the Department has an interest, at any time when—

(a) by virtue of directions under any provision of the principal Order, the Health and Medicines (Northern Ireland) Order 1988(4) or the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990(5), powers of management with respect to the land are conferred on a health and social services body, or

(b) the land is otherwise used or occupied by a health and social services body, the interest of the Department shall be treated for the purposes of any statutory provision or rule of law relating to Crown land or interests as if it were an interest held otherwise than by the Department (or any other emanation of the Crown).

(2) In Schedule 2—

(a) Part I has effect to continue certain exemptions for health and social services bodies and property held, used or occupied by such bodies; and

(b) the transitional provisions in Part II have effect in connection with the operation of paragraph (1).

(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 health and social services body to benefits in the event of his redundancy, and

(b) he also has statutory rights against the health and social services body under Parts II to IV of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(6) (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.

(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(7) (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(8) (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 shall continue to be regarded as included in that expression, whether the services are in fact provided by a health and social services body, an HSS 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.

(6) In this Article “health and social services body” means—

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

## Provision of goods and services

### Health and social services 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—

- (a) Health and Social Services Boards;
- (b) the Agency;
- (c) special agencies;
- (d) Health and Social Services trusts;
- (e) the Department;
- (f) recognised fund-holding practices;
- (g) any of the following within the meaning of the National Health Service Act 1977([9](#))—
  - (i) health authorities;
  - (ii) Family Health Services Authorities;
  - (iii) NHS trusts;
  - (iv) recognised fund-holding practices;
  - (v) the Dental Practice Board;
  - (vi) the Public Health Laboratory Service Board;
- (h) any of the following within the meaning of the National Health Service (Scotland) Act 1978([10](#))—
  - (i) Health Boards;

(ii) the Common Services Agency for the Scottish Health Service;

(iii) the Scottish Dental Practice Board;

(iv) NHS trusts;

(v) recognised fund-holding practices;

(i) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984(11);

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

(3) An arrangement falling within paragraph (1) shall be known as a health and social services contract and is referred to in this Order as an “HSS contract”.

(4) Whether or not an arrangement which constitutes an HSS 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 HSS 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 HSS 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 HSS 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.

(10) Where a body or person mentioned in paragraph (2)(g), (h), (i) or (j) 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(12) or section 17A of the National Health Service (Scotland) Act 1978(13), 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.

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

9.—(1) Nothing in the principal Order or this Order affects the power of a Health and Social Services Board or a special agency at any time to provide goods or services under the principal Order for the benefit of an individual where—

(a) the provision of those goods or services is neither within the primary functions of the Health and Social Services Board or special agency nor carried out pursuant to an HSS contract; but

(b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an HSS contract for their provision.

(2) In any case where—

(a) a Health and Social Services Board or a special agency provides goods or services for the benefit of an individual as mentioned in paragraph (1); and

(b) the provision of those goods or services—

(i) is within the primary functions of another Health and Social Services Board or special agency or of a health authority within the meaning of the National Health Service Act 1977(14); or

(ii) is a function of a Health Board, within the meaning of the National Health Service (Scotland) Act 1978, the Health and Social Services Board or special agency providing the goods or services shall be remunerated in respect of that provision by that other Health and Social Services Board, special agency, health authority or Health Board.



(3) The rate of any remuneration payable by virtue of paragraph (2) shall be calculated in such manner or on such basis as may be determined by the Department.

(4) In any case where—

(a) a Health and Social Services Board or special agency provides goods or services for the benefit of an individual; and

(b) the provision of those goods and services is not pursuant to an HSS contract; and

(c) 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 Health and Social Services Board or special agency shall be remunerated by the Department in respect of the provision of the goods or services at such rate or rates as the Department considers appropriate.

(5) In this Article—

(a) any reference to the primary functions of a Health and Social Services Board is a reference to those functions specified as such in directions given to the Board under Article 17 of the principal Order;

(b) any reference to the primary functions of a special agency is a reference to those functions specified as such in directions given to the agency under Article 4 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990([15](#)); and

(c) any reference to the primary functions of a health authority within the meaning of the National Health Service Act 1977([16](#)) shall be construed in accordance with section 3(1) of the National Health Service and Community Care Act 1990([17](#)).

## **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(18) 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([19](#));

(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([20](#)).

(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.

## **Fund-holding practices**

### **Recognition of fund-holding practices of doctors**

17.—(1) Any one or more medical practitioners who are providing general medical services in accordance with arrangements under Article 56 of the principal Order may apply to the Department for recognition as a fund-holding practice.

(2) The Department shall not grant recognition as a fund-holding practice unless the medical practitioner or, as the case may be, each of the medical practitioners concerned fulfils such conditions as may be prescribed.

(3) Regulations may make provision with respect to—

(a) the making of applications under paragraph (1);

(b) the granting and refusal of recognition as a fund-holding practice;

(c) the conditions to be fulfilled for obtaining and continuing to be entitled to such recognition;

(d) withdrawing from, or becoming a member of, an existing recognised fund-holding practice; and

(e) the continuity or otherwise of a recognised fund-holding practice in the event of the death or withdrawal of a member or the addition of a new member.

### **Payments to recognised fund-holding practices**



18.—(1) In respect of each financial year, the Department shall be liable to pay to the members of each recognised fund-holding practice a sum calculated in such manner and by reference to such factors as the Department may determine (in this Article referred to as an “allotted sum”).

(2) The liability to pay an allotted sum under paragraph (1) may be discharged, in whole or in part, in either of the following ways—

(a) by making payments on account of the allotted sum at such times and in such manner as the Department may determine; and

(b) by discharging liabilities of the members of the practice to any other person (including, in particular, liabilities under HSS contracts);

and any reference in the following provisions of this Part to payment of or of a part of an allotted sum includes a reference to the discharge, in accordance with this paragraph, of the whole or part of the liability to pay that sum.

(3) The members of a recognised fund-holding practice may apply an allotted sum only for purposes specified in regulations under paragraph (4).

(4) Regulations shall make provision with respect to the purposes for which allotted sums are to be or may be applied and may make provision generally with respect to the operation of recognised fund-holding practices in relation to allotted sums; and the regulations may, in particular,—

(a) require the members of a practice to pay to the Department out of allotted sums paid to them an amount determined in accordance with the regulations as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice;

(b) provide that the goods and services, other than general medical services, which may be purchased by or on behalf of the members of a practice out of allotted sums for the individuals on the lists of patients of the members of the practice shall be such as may be specified in a list approved for the purpose under the regulations; and

(c) impose a limit on the amount which may be spent out of an allotted sum on the provision of goods and services for any one individual, being a limit above which the cost of any goods and services for that individual in the financial year in question will fall to be met by the Health and Social Services Board whose primary functions (as defined in Article 9(5)) include the provision of goods and services (not necessarily the goods and services in question) to the individual concerned.

(5) In accordance with directions under Article 17 of the principal Order, the relevant Health and Social Services Board shall monitor the expenditure of the members of a recognised fund-holding practice and may institute an audit and review in any case where the Board considers it necessary to do so.

(6) In paragraph (4)(a) “listed” has the same meaning as in Article 63 of the principal Order.

(7) In paragraph (5) “the relevant Health and Social Services Board” in relation to a recognised fund-holding practice means—

(a) where all the members in that practice have entered into arrangements under Article 56 of the principal Order with the same Board and none of those members has entered into such arrangements with any other Board, the Board with which all the members have entered into such arrangements;

(b) in any other case, the Board in whose area resides the largest number of individuals who are on the lists of patients of the members of the practice.

### **Renunciation and removal of recognition as a fund-holding practice**

19.—(1) Regulations may make provision as to the circumstances in which the members of a recognised fund-holding practice may renounce that status and such regulations may, in particular, make provision as to —

(a) the notice to be given and the number of members of the practice by whom it is to be given;

(b) the procedure to be followed; and

(c) the consequences of such a renunciation.

(2) Regulations may make provision as to the circumstances in which and the grounds on which the Department may remove recognition from the members of a fund-holding practice,—

(a) with immediate effect; or

(b) with effect from the end of a particular financial year; or

(c) with effect from such other date as may be specified by the Department.

(3) Where provision is made as mentioned in paragraph (2), regulations shall make provision with respect to —

(a) the procedure for the removal of recognition; and

(b) the consequences of the removal of recognition.

(4) Without prejudice to the generality of the powers conferred by paragraph (3), regulations making provision as mentioned in sub-paragraph (b) of that paragraph—

(a) may provide for the transfer of rights and obligations from the members of the fund-holding practice to one or more Health and Social Services Boards determined in accordance with the regulations;

(b) may provide for the recovery of sums from the members of the practice; and

(c) may require the members of the practice to furnish such information as may reasonably be required by the Department.

(5) Where any part of an allotted sum has been applied by the members of a recognised fund-holding practice (or any one or more of them) for purposes other than those specified in regulations under Article 18(4), regulations may make provision for and in connection with the recovery by the Department of an amount equal to that part.

### **Transfer of functions relating to recognised fund-holding practices**

20.—(1) If the Department by regulations so provides, such of the functions of the Department under Articles 17 to 19 as are specified in, or determined in accordance with, the regulations shall become functions of a Health and Social Services Board with effect from such date as may be prescribed.

(2) Regulations under this Article shall make provision for determining the Health and Social Services Board which is to exercise any of the functions concerned in relation to the members of any existing recognised fund-holding practice and in relation to any medical practitioners wishing to apply for recognition.

(3) Regulations under this Article may make such incidental and consequential modifications of the principal Order and of Articles 17 to 19 as appear to the Department to be necessary or expedient in consequence of the transfer of functions effected by the regulations.

### **Indicative amounts**

#### **Indicative amounts for doctors' practices**

21.—(1) Subject to paragraph (2), for each financial year, every Health and Social Services Board shall, by notice given to each practice in relation to which it is the relevant Health and Social Services Board, 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 the Board, 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.

(2) Paragraph (1) does not apply with respect to a practice which is or forms part of a fund-holding practice recognised under Article 17.

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

(a) a single medical practitioner who practises otherwise than in partnership; or

(b) any two or more medical practitioners who practise in partnership; 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 the relevant Health and Social Services Board 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, a Health and Social Services Board 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) In this Article “relevant Health and Social Services Board” in relation to a practice means—

(a) where all the members in that practice have entered into arrangements under Article 56 of the principal Order with the same Board and none of those members has entered into such arrangements with any other Board, the Board with which all the members have entered into such arrangements;

(b) in any other case, the Board in whose area resides the largest number of individuals who are on the lists of patients of the members of the practice.

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

## **Financial provisions**

### **Accounts and audit**

**22.** For Articles 90 to 92 of the principal Order there shall be substituted the following Articles—

#### **"Accounts of certain bodies**

**90.—**(1) Each body to which this paragraph applies shall keep, in such form as the Department may direct, accounts of all money received and of all money paid out by it.

(2) In respect of each financial year—

(a) each body to which this paragraph applies shall prepare and submit to the Department annual accounts in such form as the Department may direct and those accounts shall be audited by auditors appointed by the Department;

(b) the Department shall prepare in such form as the Department of Finance and Personnel may approve summarised accounts of the bodies to which this paragraph applies and shall submit them to the Comptroller and Auditor General, who shall examine and certify them;

(c) the Department shall lay before the Assembly copies of the summarised accounts certified by the Comptroller and Auditor General together with his report (if any) on them.

(3) The Comptroller and Auditor General, in the discharge of his duty under paragraph (2)(b), may examine any accounts and any records relating thereto and any report of the auditor thereon.

(4) Paragraphs (1) and (2) apply to—

(a) Health and Social Services Boards;

(b) the Agency;

(c) special agencies; and

(d) HSS trusts.

(5) So far as relates to allotted sums paid to the members of a recognised fund-holding practice—

(a) accounts shall be kept in such form as the Department may direct and shall, subject to paragraph (6), be audited by auditors appointed by the Department;

(b) the Comptroller and Auditor General may examine the accounts and the records relating to them and any report of the auditor on them;

(c) in respect of each financial year, annual accounts in such form as the Department may direct shall be prepared and submitted to the relevant Health and Social Services Board; and

(d) in respect of each financial year, each Health and Social Services Board shall prepare, in such form as the Department may direct, and include in its own accounts, a summarised version of the accounts submitted to the Board under sub-paragraph (c).

(6) In such circumstances and to such extent as regulations so provide, the requirement in paragraph (5)(a) to have accounts audited shall not apply to the accounts for any year of a recognised fund-holding practice if those accounts are submitted to a Health and Social Services Board and summarised in the Board's accounts.

(7) The Department, with the approval of the Department of Finance and Personnel, may make such regulations for the purposes of this Article and Article 91 as it considers necessary and such regulations may prescribe the times at which accounts shall be submitted—

(a) under paragraph (2)(a) or Article 91(1)(a) to the Department;

(b) under paragraph (2)(b) to the Comptroller and Auditor General; and

(c) under paragraph (5)(c) to the relevant Health and Social Services Board.

(8) In this Article—

“Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland;

“allotted sum”, “recognised fund-holding practice” and “relevant Health and Social Services Board” have the same meanings as in Article 18 of the 1991 Order.

#### **Accounts of endowments and other property held on trust**

**91.**—(1) In respect of each financial year—

(a) each body to which this Article applies shall prepare and submit to the Department annual accounts in such form as the Department may direct of endowments and other property held on trust by it and those accounts shall be audited by auditors appointed by the Department;

(b) the Department shall prepare summarised accounts of endowments and other property held on trust by bodies to which this Article applies; and

(c) auditors appointed by the Department shall examine and certify the summarised accounts, and the Department shall lay copies of them before the Assembly.

(2) This Article applies to—

(a) Health and Social Services Boards;

(b) special agencies;

(c) HSS trusts; and

(d) the trustees for an HSS trust appointed in pursuance of Article 16 of the 1991 Order.

#### **Power of Department to give directions as to audit of accounts**

**92.**—(1) The Department may give directions generally with respect to the audit of accounts under Article 90(2)(a) or (5)(a) or Article 91(1)(a) and, in particular, may confer on the auditor of any accounts—

(a) such rights of access to, and production of, books, accounts, vouchers and other documents as may be specified in the directions; and

(b) such right to require—

(i) in the case of an audit under Article 90(2)(a), from any member or officer or former member or officer of a body to which Article 90(2) applies, such information relating to the affairs of the body as the Department may think necessary for the proper performance of the duty of the auditor under Article 90(2);

(ii) in the case of an audit under Article 90(5)(a), from any member or employee or former member or employee of any fund-holding practice, such information relating to the affairs of that practice as the Department may think necessary for the proper performance of the duty of the auditor under Article 90(5);

(iii) in the case of an audit under Article 91(1)(a) of the accounts of the trustees for an HSS trust, from any trustee or former trustee for that HSS trust such information relating to the affairs of those trustees as the Department may think necessary for the proper performance of the duty of the auditor under Article 91(1);

(iv) in the case of an audit under Article 91(1)(a) of the accounts of any other body, from any member or officer or former member or officer of that body, such information relating to the affairs of that body as the Department may think necessary for the proper performance of the duty of the auditor under Article 91(1).

(2) In the case of a recognised fund-holding practice the reference in paragraph (1)(a) to books, accounts, vouchers and other documents is a reference to all books, accounts, vouchers and other documents relating to the practice, whether or not relating to the allotted sum.

(3) In paragraph (2) “allotted sum” and “recognised fund-holding practice” have the same meanings as in Article 18 of the 1991 Order.”.

#### **Power of Boards, special agencies and HSS trusts to raise funds by appeals, collections, etc.**

**23.**—(1) The Department may by regulations confer power on Health and Social Services Boards, special agencies and HSS 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.

(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 personal social services 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 HSS trust for which trustees have been appointed under Article 16(1), then, if those trustees and the HSS trust agree, the property may be held, administered and applied by those trustees instead of by the HSS trust; and references in paragraphs (6) to (8) to a relevant body accordingly include references to trustees for an HSS 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.

**Schemes for meeting losses and liabilities, etc., of certain health and social services 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—

(a) Health and Social Services Boards;

(b) the Agency;

(c) special agencies; and

(d) HSS 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.

(5) Neither the Department nor any body administering a scheme under this Article shall, by virtue of their activities under the scheme, be regarded as carrying on insurance business for the purposes of the Insurance Companies Act 1982(21).

### 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 ([22](#)); 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.”.

#### **Exclusion of powers to provide accommodation in certain cases**

26. After Article 36 of the principal Order there shall be inserted the following Article—

##### **“Exclusion of powers to provide accommodation under Article 15 or 36 in certain cases**

**36A.**—(1) Subject to paragraph (2), no accommodation may be provided under Article 15 or 36 for any person who immediately before the date on which Article 26 of the 1991 Order comes into operation was ordinarily resident in—

(a) premises in respect of which any person is registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971;

(b) premises which do not fall within the definition of a nursing home in section 10(1) of that Act by reason only of their being maintained or controlled by a body of persons constituted by special Act of Parliament or incorporated by Royal Charter;

(c) a home for persons in need in respect of which any person is registered in accordance with Schedule 5; or

(d) 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.

(2) The Department may by regulations provide that, in such cases and subject to such conditions as may be prescribed, paragraph (1) shall not apply in relation to such classes of persons as may be prescribed.

(3) The Department shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of paragraph (1).

(4) This Article does not affect the validity of any contract made before the date mentioned in paragraph (1) for the provision of accommodation on or after that date or anything done in pursuance of such a contract.”.

### **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 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 health services**

### **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;”;

(iii) “for the words services provided in accordance with the arrangements are” there shall be substituted “provision of drugs, medicines, appliances and services in accordance with the arrangements is”;

(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.**—(1) The chief administrative medical officer of a Health and Social Services Board shall hereafter be known as the Director of Public Health of that Board and, accordingly, for any reference to the chief administrative medical officer 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 this Article, there shall be substituted a reference to the Director of Public Health of that Board.

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

(a) section 1 of the Notification of Births Act 1907([23](#));

(b) sections 125(2) and 134 of the Factories Act (Northern Ireland) 1965([24](#));

(c) in the Public Health Act (Northern Ireland) 1967([25](#)), sections 2(1), 3, 5(1), 6(2), 7, 8(1), 9(1), 10, 11(1), 12(1), 14(1), 15, 16(1), 17(1), 21, 22A and 32; and

(d) Article 33 of the Food (Northern Ireland) Order 1989([26](#)).

(3) In section 22A of the Public Health Act (Northern Ireland) 1967 and Article 33(6) of the Food (Northern Ireland) Order 1989 (exercise of functions of chief administrative medical officer) for the words “other medical officer” there shall be substituted “other officer”.

### **Regulations, orders and directions**

**33.**—(1) Regulations under this Order shall be subject to negative resolution.

(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([27](#)) shall not apply to any order made by the Department under Article 13(1) or paragraph 24 of Schedule 3.

#### **Minor and consequential amendments**

34. Schedule 5, which contains minor amendments and amendments consequential on the provisions of this Order, shall have effect.

#### **Repeals**

35. The statutory provisions specified in Schedule 6, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule.

*G. I. de Denev*

Clerk of the Privy Council

## **SCHEDULES**

Article 4(2).

### **SCHEDULE 1 HEALTH AND SOCIAL SERVICES COUNCILS**

1. It is the duty of a Health and Social Services Council (in this Schedule referred to as a "Council")—

- (a) to represent the interests of the public in the health and personal social services in the Council's area;
- (b) to perform such other functions as may be conferred on it by virtue of paragraph 2.

2. Regulations may make provision as to—

- (a) the membership of Councils (including the appointment or election of a chairman of each Council);
- (b) the proceedings of Councils;
- (c) the appointment and proceedings of committees of Councils;
- (d) the staff, premises and expenses of Councils;
- (e) the consultation of Councils by Health and Social Services Boards, special agencies and HSS trusts with respect to such matters, and on such occasions, as may be prescribed;
- (f) the furnishing of information to Councils by Health and Social Services Boards, special agencies and HSS trusts on such subjects and subject to such conditions as may be prescribed;
- (g) the right of members of Councils to enter and inspect premises controlled by Health and Social Services Boards, special agencies and HSS trusts, subject to such conditions as may be prescribed;

(h) the consideration by Councils of matters relating to the operation of health and personal social services within their areas, and the giving of advice by Councils to Health and Social Services Boards and special agencies on such matters;

(i) the preparation and publication of reports by Councils on such matters, and the furnishing and publication by Health and Social Services Boards and special agencies of comments on the reports;

(j) the functions to be exercised by Councils in addition to the functions exercisable by them by virtue of paragraph 1(a) and the preceding provisions of this paragraph;

(k) the collaboration by Councils with each other in the exercise of their functions;

(l) such other matters in connection with Councils as the Department thinks fit.

3. Regulations made under paragraph 2(a) shall provide for the members of Councils to be appointed by the Department and shall secure, as respects each Council, that—

(a) at least one member of the Council is so appointed on the nomination of each district council of which the area or part of it is included in the Council's area;

(b) the other members of the Council are so appointed in such manner and after such consultation as may be prescribed.

4. Nothing in paragraph 3 affects the validity of anything done by or in relation to a Council during any period during which, by reason of a vacancy in the membership of the Council or a defect in the appointment of a member of it, a requirement included in regulations in pursuance of that paragraph is not satisfied.

5. References in this Schedule to the area of a Council are references to the area for which the Council is established.

Article 7(2).

## SCHEDULE 2 PROVISIONS ARISING OUT OF REMOVAL OF CROWN IMMUNITIES FROM HEALTH AND SOCIAL SERVICES BODIES

### PART I AMENDMENTS CONTINUING CERTAIN STATUTORY EXEMPTIONS

#### [The Employers' Liability \(Defective Equipment and Compulsory Insurance\) \(Northern Ireland\) Order 1972 \(NI 6\)](#)

1. In Article 7 (employers exempted from compulsory insurance) after paragraph (a) there shall be inserted the following paragraph—

“(aa) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991; or”

#### [The Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#)

2. In Article 90 (requirement of third-party insurance or security) after paragraph (2) there shall be inserted the following paragraph—

“(2A) This Article shall not apply to—

(a) a motor vehicle owned by a health and social services body, as defined in Article 7(6) of the Health and Personal Social Services (Northern Ireland) Order 1991; or

(b) an ambulance owned by a Health and Social Services trust established under that Order, at a time when the vehicle is being driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.”.

**The Copyright, Designs and Patents Act [1988 \(c. 48\)](#)**

3. In section 48 (material communicated to the Crown in the course of public business) in subsection (6) after “1978” there shall be inserted “and also includes a health and social services body, as defined in Article 7(6) of the Health and Personal Social Services (Northern Ireland) Order 1991, and a Health and Social Services trust established under that Order”.

**PART II TRANSITIONAL PROVISIONS**

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.

**The Medicines Act [1968 \(c. 67\)](#)**

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 sub-paragraph (2), and

(c) the application has not been determined before the appointed day, 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.

#### **The Planning (Northern Ireland) Order 1972 (NI 17)**

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.

#### **The Rent (Northern Ireland) Order 1978 (NI 20)**

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).

(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.

#### **The Building Regulations (Northern Ireland) Order 1979 (NI 16)**

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.

#### The Fire Services (Northern Ireland) Order 1984 (NI 11)

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.

#### Article 10. HEALTH AND SOCIAL SERVICES TRUSTS

### SCHEDULE 3

#### 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 HSS trust or any subsequent order under that provision amending or revoking a previous order.

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 HSS 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) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in head (c) of a person appointed from a university with a medical or dental school specified in the order;

(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) For the purposes of sub-paragraph (1)(d), an HSS trust is to be regarded as having a significant teaching commitment in the following cases—

(a) if the trust is established to assume responsibility for the ownership and management of a hospital or other establishment or facility which, in the opinion of the Department, has a significant teaching and research commitment; and

(b) in any other case, if the Department so provides in the order.

(3) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—

(a) is employed by the university in question, and

(b) would also, apart from this sub-paragraph, be regarded as employed by the trust, his employment by the trust shall be disregarded in determining whether, if appointed, he will be a non-executive director of the trust.

**4.—**(1) An order may require a relevant body to make staff, premises and other facilities available to an HSS 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.

**5.—**(1) An order may provide for the establishment of an HSS 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 HSS 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 HSS 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.

## **PART II DUTIES, POWERS AND STATUS**

### **Specific duties**

**6.—(1)** An HSS 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 and, with respect to the exercise of the powers conferred by Article 10(9) and paragraphs 10 to 15 below, shall comply with any directions given to it by the Department, whether of a general or a particular nature.

(2) An HSS trust shall comply with any directions given to it by the Department with respect to all or any of the following matters—

(a) the qualifications of persons who may be employed as officers of the trust;

(b) the employment, for the purpose of performing functions specified in the direction, of officers having qualifications or experience of a description so specified;

(c) the manner in which officers of the trust are to be appointed;

(d) prohibiting or restricting the disposal of, or of any interest in, any asset which, at the time the direction is given, the Department reasonably considers to have a value in excess of such sum as may be specified in an order under Article 10(1) and in respect of which the Department considers that the interests of the health and personal social services require that the asset should not be disposed of;

(e) compliance with guidance or directions given (by circular or otherwise) to a relevant body; and

(f) the implementation of awards relating to the distinction or merit of medical practitioners or dental practitioners or any class or classes of such practitioners.

**7.—(1)** For each financial year an HSS 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 HSS 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 HSS trust shall hold a public meeting at which such documents as may be prescribed shall be presented.

**8.** An HSS 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.

**9.—(1)** An HSS 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 HSS 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.

### **Specific powers**

10. In addition to carrying out its other functions, an HSS trust may enter into HSS contracts.

11. An HSS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

12. An HSS 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 personal social services.

13. An HSS 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 jointly with any relevant body, with another HSS trust or with any other body or individual.

14. According to the nature of its functions, an HSS 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.

15. For the purpose of making additional income available in order better to perform its functions, an HSS trust shall have the powers specified in Article 3(2) of the Health and Medicines (Northern Ireland) Order 1988([28](#)) (extension of powers of the Department for financing health services).

### **General powers**

16. Subject to Schedule 4, an HSS 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 HSS trust (including the purposes of any specific hospital or other establishment or facility which is owned and managed by the trust);

(d) to employ staff on such terms as the trust thinks fit.

17.—(1) Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an HSS 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 HSS 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.

### **Status**

18. An HSS 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( [29](#) ), as enjoying any status, immunity or privilege of the Crown; and an HSS trust's property shall not be regarded as property of, or property held on behalf of, the Crown.

## **PART IIISUPPLEMENTARY PROVISIONS**

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

19.—(1) In any case where an HSS 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 HSS contract, and

(b)the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an HSS contract for their provision, and

(c)the provision of those goods or services—

(i)is within the primary functions (as defined in Article 9(5)) of a Health and Social Services Board or special agency or of a health authority within the meaning of the National Health Service Act 1977([30](#)), or

(ii)is a function of a Health Board within the meaning of the National Health Service (Scotland) Act 1978([31](#)), the trust shall be remunerated by that Health and Social Services Board, special agency, health authority or Health Board in respect of the provision of the goods or services in question.

(2) The rate of any remuneration payable by virtue of sub-paragraph (1) shall be calculated in such manner or on such basis as may be determined by the Department.

20. In any case where an HSS 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 HSS 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.

### **Compulsory acquisition**

**21.—**(1) An HSS trust may, for the purposes of its functions, acquire land compulsorily.

(2) Where an HSS 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 HSS trust and the Department may make a vesting order.

(3) Schedule 6 to the Local Government (Northern Ireland) Act 1972([32](#)) 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.

(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([33](#)).

(6) The modifications of Schedule 6 to the Local Government (Northern Ireland) Act 1972([34](#)) 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 HSS trust or the HSS trust or the chief officer of the HSS 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 HSS trust to have an interest in the matter”;

(g) paragraph 19 shall be omitted.

(7) Where an HSS trust proposes to acquire land compulsorily under this paragraph, a person authorised in writing by the HSS 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 HSS trust.

#### **Instruments, etc.**

**22.** The fixing of the seal of an HSS 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.

#### **PART IV DISSOLUTION**

**23.—(1)** The Department may by order dissolve an HSS trust.

(2) An order under this paragraph may be made—

(a) on the application of the HSS trust concerned; or

(b) if the Department considers it appropriate in the interests of the health and personal social services.

(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.

**24.—(1)** If an HSS 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 HSS trust, of such of the property, rights and liabilities of the HSS 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.

(2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the HSS 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.



25. Without prejudice to the generality of paragraph 24, if an HSS trust is dissolved under this Part, the Department or such other HSS 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.

26. An HSS trust may not be dissolved or wound up except in accordance with this Part.

Article 14(9).

## SCHEDULE 4 FINANCIAL PROVISIONS RELATING TO HSS TRUSTS

### **Borrowing**

1.—(1) Subject 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 HSS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Department or from any other person.

(2) An HSS 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.

(3) Except with the consent of the Department, an HSS trust may not borrow in any currency other than sterling; and the Department shall not give its consent to any such borrowing except with the approval of the Department of Finance and Personnel.

(4) Interest on any sums borrowed from the Department by an HSS trust shall be paid at such variable or fixed rates and at such times as the Department may determine.

(5) The other terms on which any sums are borrowed from the Department by an HSS trust shall be such as the Department may determine; and, in the event of the early repayment of any sums so borrowed, such terms may require the payment of a premium or allow a discount.

(6) A determination under sub-paragraph (4) or (5) shall be made with the consent of the Department of Finance and Personnel.

### **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 HSS 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.

(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the HSS 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.

#### **Limits on indebtedness**

3.—(1) The aggregate of all sums borrowed by HSS 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.

(2) The reference in sub-paragraph (1) to sums borrowed does not include a reference to HSS trusts' initial loans.

#### **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 HSS trust under paragraph 1, pay an amount to the trust as public dividend capital.

(2) Article 14 shall apply to public dividend capital paid to an HSS trust under this paragraph as it applies to public dividend capital forming part of the trust's originating capital debt.

#### **Surplus funds**

5. If it appears to the Department that any amount standing in the reserves of an HSS trust 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 that amount into the Consolidated Fund.

#### **Investment**

6. An HSS trust may not invest any money held by it except in securities of the Government of the United Kingdom or in such other manner as the Department may with the consent of the Department of Finance and Personnel approve.

Article 34.

## **SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS**

### **PART I AMENDMENTS COMING INTO OPERATION ON 1ST APRIL 1991**

#### **The Parliamentary Commissioner Act (Northern Ireland) [1969 \(c. 10\)](#)**

- In Schedule 2 in paragraph 5 (matters not subject to investigation) for the words from “the Northern Ireland Central Services Agency” to the end there shall be substituted “or the Northern Ireland Central Services Agency for the Health and Social Services”.

#### **The Nursing Homes and Nursing Agencies Act (Northern Ireland) [1971 \(c. 32\)](#)**

- In section 5(5) (notice of appeal) the word “administrative” shall cease to have effect.

**The Health and Personal Social Services(Northern Ireland) Order 1972 (NI 14)**

- In Article 2(2) (interpretation)—

(a)

after the words “In this Order” there shall be inserted “and the 1991 Order”;

(b)

after the definition of “order” there shall be inserted—

““the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991;”.

- In Article 53(1) (default powers) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.
- In Article 61(2)(b) (right to be included in list of practitioners providing general dental services) the words “resident in Northern Ireland” shall cease to have effect.
- In Article 62(2)(b) (right to be included in list of persons providing general ophthalmic services) the words “resident in Northern Ireland and” shall cease to have effect.
- In Article 87(1) (expenses of certain bodies) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.
- In Article 88(1) (regulation of financial arrangements of certain bodies) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.
- In Article 89(1) (remuneration of members of certain bodies) for sub-paragraph (a) there shall be substituted—
  - “(a)members of—
    - (i)any body established or appointed under this Order;
    - (ii)a special agency;
    - (iii)a Health and Social Services Council established under Article 4 of the 1991 Order;”.
- In Article 90 (accounts of certain bodies) in paragraphs (1), (2)(a) and (2)(b) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.
- In Article 92 (directions as to audit) for the words “the Agency and the Staffs Council” there shall be substituted “and the Agency”.
- In Article 97(1) (protection for officers) for the words “the Agency or the Staffs Council” where they twice occur there shall be substituted “or the Agency”.
- In Schedule 1 (Health and Social Services Boards) in paragraph 11(1)(a) the word “administrative” shall cease to have effect.

- In Schedule 3 (the Agency) in paragraphs 10(a) and 12 the word “administrative” shall cease to have effect.
- In Schedule 13 (orders under Article 76) in paragraph 1(e) for the words “the Agency or the Staffs Council” there shall be substituted “or the Agency”.

**The Northern Ireland Assembly Disqualification Act [1975 \(c. 25\)](#)**

- In Schedule 1 (offices disqualifying for membership of the Assembly) in Part III in the entry which begins “Chairman of a Health and Social Services Board” after the word “Chairman” there shall be inserted “or any member, not being also an employee,”.

**[The Health and Medicines \(Northern Ireland\) Order 1988 \(NI 24\)](#)**

- In Article 3 (extension of powers for financing of health services) in paragraph (2) after the word “powers” in the second place where it occurs, there shall be inserted “(exercisable outside as well as within Northern Ireland).”.

**[The Health and Personal Social Services \(Special Agencies\)\(Northern Ireland\) Order 1990 \(NI 3\)](#)**

- In Article 4(5) (directions to special agency) at the end there shall be added “and section 17(2) of the Interpretation Act (Northern Ireland) 1954([35](#)) shall apply to a direction under this Article as if the direction were a statutory instrument.”.

**PART II AMENDMENTS COMING INTO OPERATION ON A DAY OR DAYS TO BE APPOINTED UNDER ARTICLE 1(2)**

**The Human Tissue Act (Northern Ireland) [1962 \(c. 19\)](#)**

- In section 1 (removal of parts of bodies for medical purposes)—

(a)

in subsection (4A)(b) after the words “health and social services board” there shall be inserted “or HSS trust”;

(b)

after subsection (8) there shall be added the following subsection—

“(9) In this section “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

**The Children and Young Persons Act (Northern Ireland) [1968 \(c. 34\)](#)**

- In section 103 (duty of Department to assume care of children) at the end there shall be added the following subsections—

“(7) The Department may require—

(a) the directors of an HSS trust to hand over any child accommodated in an HSS home,

(b) the person in charge of a voluntary home to hand over any child accommodated in the voluntary home, with a view to the child’s being boarded out by the Department, and the child shall thereupon be deemed to have come within the care of the Department under this section.

(8) In this Act—

“HSS home” means a home for the boarding, protection, care and maintenance of children in need of help, being a home managed by an HSS trust;

“HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

- In section 114(1)(b) (maintenance of child in home) after the words “placing him in” there shall be inserted “an HSS home or”.
- In section 117(1) (accommodation of children in homes) after the words “voluntary home” there shall be inserted “or HSS home”.
- In section 126 (definition of voluntary home) at the end there shall be added

“; or

(c) a home or hostel provided under Part VII; or

(d) an HSS home.”.

- In section 180(1) (interpretation) at the appropriate place in alphabetical order there shall be inserted—
  - ““HSS home” and “HSS trust” have the meanings assigned to them by section 103(8);”.

**The Commissioner for Complaints Act (Northern Ireland) [1969 \(c. 25\)](#)**

- In Part II of Schedule 1 (public bodies subject to investigation) the following entry shall be inserted at the appropriate place in alphabetical order—

“A Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

**The Nursing Homes and Nursing Agencies Act (Northern Ireland) [1971 \(c. 32\)](#)**

- In section 10(1) in the definition of “nursing home” in paragraph (a) after the words “Government department” there shall be inserted “or an HSS trust established under the Health and Personal Social Services (Northern Ireland) Order 1991”.

**[The Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#)**

- In Article 2(2) (interpretation)—

(a)

after the definition of “grant-aided” there shall be inserted—

““Health and Social Services Board” means a body established under Article 16;

“health and social services contract” has the meaning assigned to it by Article 8(3) of the 1991 Order and “HSS contract” shall be construed accordingly;

“Health and Social Services trust” has the meaning assigned to it by Article 10(1) of the 1991 Order and “HSS trust” shall be construed accordingly;”;

(b)

in the definition of “home for persons in need” in paragraph (b) after the word “Ministry” there shall be inserted “or managed by an HSS trust” and in paragraph (f) after the words “government department” there shall be inserted “, HSS trust”;

(c)

after the definition of “officer” there shall be inserted—

- ““operational date”, in relation to an HSS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 3 to the 1991 Order;”.
- In Article 15(4) (general social welfare) the words “Subject to Article 99,” shall cease to have effect and after that paragraph there shall be inserted the following paragraph—

“(5) In so far as it relates to the provision of accommodation, this Article is subject to Articles 36, 36A and 99.”.

- In Article 45(1) (travelling expenses of patients, etc.)—

(a)

after the word “payment” there shall be inserted “by the Department or an HSS trust”;

(b)

in sub-paragraph (a) after the words “this Order” there shall be inserted “or the 1991 Order”;

(c)

after sub-paragraph (c) there shall be added the words “and such regulations may provide for the reimbursement by the Department to an HSS trust of payments made by the trust by virtue of this paragraph.”.

- Article 52 (emergency powers) shall be renumbered as paragraph (1) of that Article and —

(a)

in that paragraph for the words “this Order or the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990” and “this Order or that Order” there shall be substituted “the health and personal social services legislation”;

(b)

after that paragraph there shall be added the following paragraph—

“(2) In this Article, Article 53 and Article 54 “the health and personal social services legislation” means—

(a) this Order;

(b) the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990; and

(c) the 1991 Order.”.

- In Article 53 (default powers)—

(a)

in paragraph (1) for the words from the beginning to “1990” there shall be substituted “Where the Department is of opinion, on representations made to it or otherwise, that any Health and Social Services Board, special agency or HSS trust or the Agency has failed to discharge any functions conferred or imposed on it under the health and personal social services legislation”;

(b)

in paragraph (2) for the words from “the provisions” to “1990” there shall be substituted “the appropriate provisions of the health and personal social services legislation”.

- In Article 54 (inquiries) for the words “this Order” there shall be substituted “the health and personal social services legislation”.
- In Article 67 (co-operation with other bodies) after the words “Health and Social Services Boards” there shall be inserted “, HSS trusts”.
- In Article 68 (supply of goods and services)—

(a)

in paragraph (1) for the words “a Health and Social Services Board, the Agency or a special agency” in the first place where they occur there shall be substituted “a body to which this Article applies” and in the second place where they occur there shall be substituted “or a body to which this Article applies”;

(b)

at the end there shall be added the following paragraph—

“(3) This Article applies to the following bodies—

(a) a Health and Social Services Board;

(b) the Agency;

(c) a special agency;

(d) an HSS trust.”.

- Article 69 (arrangements with district councils) shall be renumbered as paragraph (1) of that Article and —

(a)

in that paragraph for the words “a Health and Social Services Board and a district council or a special agency and a district council” there shall be substituted “a body to which this Article applies and a district council”;

(b)

in that paragraph for the words “the Health and Social Services Board or, as the case may be, the special agency” there shall be substituted “that body”;

(c)

after that paragraph there shall be added the following paragraph—

“(2) This Article applies to the following bodies—

(a) a Health and Social Services Board;

(b) a special agency;

(c) an HSS trust.”.

- In Article 71(1) (arrangements with voluntary organisations) at the beginning there shall be inserted “Subject to Articles 36 and 36A,”.
- In Article 83 for paragraph (1) there shall be substituted the following paragraphs—

“(1) Where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any hospital or service administered by a Health and Social Services Board or an HSS trust, the trust instrument shall be construed as authorising or (as the case may be) requiring the trustees to apply the trust property, to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate authority.

(1A) In paragraph (1) “the appropriate authority” means—

(a) where the hospital or service is administered by a Health and Social Services Board, that Board;

(b) where the hospital or service is administered by an HSS trust and trustees have been appointed for that trust under Article 16 of the 1991 Order, those trustees;

(c) where the hospital or service is administered by an HSS trust and sub-paragraph (b) does not apply, the HSS trust.”.

- In Article 85 for paragraph (2) there shall be substituted the following paragraph—

“(2) For the purposes of giving effect to the provisions of any will, deed or other like instrument—



(a) any reference therein to a management committee, a health authority or a welfare authority shall be construed as a reference to the appropriate Health and Social Services Board;

(b) any reference therein to a hospital or other establishment or facility managed by a Health and Social Services Board shall be construed as a reference to that Board;

(c) any reference therein to a hospital or other establishment or facility managed by an HSS trust shall be construed as a reference to that trust.”.

- In Article 86(1) (property of voluntary organisations)—

(a)

in sub-paragraph (a) after the word “Boards” there shall be inserted “or HSS trusts”;

(b)

after the word “Board” in the first place where it occurs there shall be inserted “, an HSS trust or the trustees for an HSS trust (in this Article referred to as “the transferee”);

(c)

for the words “that Board” where they twice occur there shall be substituted “the transferee”.

- In Article 97(1) (protection of officers of certain bodies) for the words from the beginning to “as the case requires,” there shall be substituted—

- “An officer of—

(a)

a Health and Social Services Board;

(b)

a special agency;

(c)

the Agency; or

(d)

an HSS trust,

shall not be personally liable in respect of any act done by him in the execution of any function of any such body”.

- In Article 98(1) (charges for services) after the words “provided under this Order” there shall be inserted “or the 1991 Order”.

- In Article 101(1) (recovery of cost of accommodation) for the words from the beginning to “any person” there shall be substituted “Where under Article 15 or 36 accommodation is provided, or proposed to be provided, for any person”.

- In Schedule 15 (charges for services)—

(a)

in paragraph 1(a)(i) after the words “provided under this Order” there shall be inserted “or the 1991 Order”;

(b)

in paragraph 6 after the words “benefit under this Order” there shall be inserted “or the 1991 Order”;

(c)

in paragraph 9 after the words “the Ministry” where they first occur there shall be inserted the words “or an HSS trust” , after those words in the second and third places where they occur there shall be inserted the words “or the HSS trust” and after the words “this Order” there shall be inserted the words “or the 1991 Order”;

(d)

in paragraph 10 after the words “this Order” there shall be added the words “or the 1991 Order”.

**The Northern Ireland Assembly Disqualification Act [1975 \(c. 25\)](#)**

- In Schedule 1 (offices disqualifying for membership of the Assembly) in Part III at the appropriate place in alphabetical order there shall be inserted the following entry—

“Chairman or non-executive director of a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

**[The Industrial Relations \(No. 2\) \(Northern Ireland\) Order 1976 \(NI 28\)](#)**

- In Article 39 (time off for public duties) in paragraph (1) at the end of sub-paragraph (d) there shall be added the words “or a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991”.

**[The Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#)**

- In Article 99 (expenses of hospital treatment)—

(a)

in paragraph (1) after the words “Health and Social Services Board” there shall be inserted “or HSS trust”;

(b)

in paragraph (2) at the end there shall be added—

“HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

#### The Social Security (Northern Ireland) Order 1982 (NI 16)

- In Article 28 (interpretation) after paragraph (5) there shall be inserted —

“(5A) Where, in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part or of such provisions of this Part as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person’s employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract; and the powers conferred by this paragraph are without prejudice to any other power to make regulations under this Part.”.

#### The Education and Libraries (Northern Ireland) Order 1986 (NI 3)

- In Article 36 (duty of health and social services board to notify its opinion that a child has special educational needs)—

(a)

in paragraph (1) for the words from the beginning to “the opinion that he has” there shall be substituted —

- “If a health and social services board —

(i)

in the course of exercising any of its functions in relation to a child who has not attained the age of five years; or

(ii)

after receiving notice under paragraph (1A) in respect of a child and making such inquiries as it thinks fit, forms the opinion that the child has”;

(b)

after paragraph (1) there shall be inserted the following paragraphs—

“(1A) If, in the course of the exercise by an HSS trust of any of its functions in relation to a child who has not attained the age of five years, the directors of the trust form the opinion that the child has, or probably has, special educational needs, the directors shall notify the health and social services board for the area in which the child resides of that opinion.

(1B) In paragraph (1A) “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

#### The Mental Health (Northern Ireland) Order 1986 (NI 4)

- In Article 90(2) (definition of private hospital) at the end there shall be added the words “or in a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.
- After Article 134 there shall be inserted the following Article—

#### **“HSS trusts**

**134A.**—(1) The Department may by regulations made subject to affirmative resolution make such amendments to this Order as appear to the Department to be necessary or expedient in consequence of, or in connection with, the establishment or proposed establishment of one or more HSS trusts.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may amend this Order so as to—

(a) apply to a hospital, establishment or facility managed by an HSS trust, any provision of this Order referring or relating to a hospital;

(b) apply to an HSS trust or the directors of such a trust any provision of this Order referring or relating to a Board;

(c) otherwise confer on an HSS trust functions corresponding to functions exercisable under this Order by a Board.

(3) In this Article “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.

- In Article 135(2) after the words “Article 95” there shall be inserted “or 134A”.

#### The Social Security (Northern Ireland) Order 1986 (NI 18)

- In Article 51 (interpretation) after paragraph (2) there shall be inserted —

“(2A) Where, in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a woman’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated

as one contract for the purposes of this Part or of such provisions of this Part as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the woman's employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract; and the powers conferred by this paragraph are without prejudice to any other power to make regulations under this Part."

#### **The AIDS (Control) (Northern Ireland) Order 1987 (NI 18)**

- In Article 2(2) (interpretation) at the end there shall be added—

““HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.”.
- In Article 3(1) (periodical reports on matters relating to AIDS and HIV) at the end there shall be added “and by each HSS trust”.
- In Article 3(2)(b) (publication of reports) after the word “Board” there shall be inserted “or HSS trust”.
- In the Schedule (contents of reports) after the word “Board” in each place where it occurs there shall be inserted “or HSS trust”.

#### **The Disabled Persons (Northern Ireland) Act 1989 (c. 10)**

- In section 7 (persons discharged from hospital accommodation)—

(a)

for subsection (1) there shall be substituted the following subsection—

“(1) Where a person is to be discharged from hospital accommodation after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date on which he is to be discharged, the managers of the hospital accommodation shall, as soon as is reasonably practicable after that date is known to them, give written notification of that date to the Board in whose area it appears to the managers that that person is likely to reside after his discharge (unless the managers are that Board).”;

(b)

in subsection (2) for the words from “the responsible Board” to the end there shall be substituted “the managers of the hospital accommodation shall, as soon as is reasonably practicable, give written notification of that person’s discharge in accordance with subsection (1).”;

(c)

after subsection (2) there shall be inserted the following subsection —

“(2A) Where—

(a) a Board receives a notification given under subsection (1) or (2) with respect to a person who is under the age of 19 on the date on which he is to be, or is, discharged; or

(b) the managers of hospital accommodation from which such a person is to be, or is, discharged as mentioned in subsection (1) or (2) are the Board referred to in subsection (1), that Board shall, as soon as is reasonably practicable, give written notification of the date on which that person is to be, or is, discharged to the education and library board in whose area it appears to the Board that that person is likely to reside after his discharge.”;

(d)

for subsections (3) and (4) there shall be substituted the following subsections —

“(3) Where—

(a) a Board receives a notification given with respect to a person under subsection (1) or (2), or

(b) the managers of hospital accommodation from which a person is to be, or is, discharged as mentioned in subsection (1) or (2) are the Board referred to in subsection (1), that Board shall, subject to subsection (7), make arrangements for an assessment of the needs of that person with respect to the provision of—

(i) any health services, or

(ii) any personal social services.

(4) In making any arrangements under subsection (3) a Board falling within paragraph (a) of that subsection shall consult the managers of the hospital accommodation in question.”;

(d)

in subsection (8) for the definition of “responsible Board” there shall be substituted —

○ ““the managers”—

(a)

in relation to hospital accommodation vested in an HSS trust, means the directors of that trust;

(b)

in relation to hospital accommodation vested in the Department, means the Board which administers that accommodation.”.

- In section 11(1) (interpretation) at the end of the definition of “hospital accommodation” there shall be added “or an HSS trust” and after that definition there shall be inserted—

““HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991;”.

#### **The Opticians Act 1989 (c. 44)**

- In section 27 (sale and supply of optical appliances), at the end of subsection (4)(b)(iii) there shall be inserted the words “or the Health and Personal Social Services (Northern Ireland) Order 1991”.

Article 35.

## SCHEDULE 6 REPEALS

### PART I REPEALS COMING INTO OPERATION ON 1ST APRIL 1991

<i>Chapter or Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
<a href="#">1969 c. 25 (N.I.)</a>	The Commissioner for Complaints act (Northern Ireland) 1969.	In Part II of Schedule 1 the entry relating to the Northern Ireland Council for the Health and Social Services.
<a href="#">1971 c. 32 (N.I.)</a>	The Nursing Homes and Nursing Agencies act (Northern Ireland) 1971.	In section 5(5) the word “administrative”.
<a href="#">1972 NI 14.</a>	The Health and Personal Social Services (Northern Ireland) Order 1972.	In Article 2(2) the definitions of “the Council” and “the Staffs Co Article 20. Articles 28 and 29. Article 56(2)(d). In Article 56(2A) the words “be entitled to”. In Article 61(2)(b) the words “resident in Northern Ireland”. In Article 62(2)(b) the words “resident in Northern Ireland and”. Articles 77 and 78. In Schedule 1, in paragraph 8(2) the words “Without prejudice to 20”, in paragraph 8(3) the words from “, so however” to the end of paragraph 11(1)(a) the word “administrative”. In Schedule 3, in paragraphs 10(a) and 12 the word “administrative”. Schedule 4.
<a href="#">1975 c. 25.</a>	The Northern Ireland Assembly Disqualification Act 1975.	

<i>Chapter or Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
<a href="#">1978 NI 26.</a>	The Health and Personal Social Services (Northern Ireland) Order 1978.	Article 10.  In Schedule 1, paragraph 3.
<a href="#">1986 NI 24.</a>	The Health and Personal Social Services and Public Health (Northern Ireland) Order 1986.	Article 4.  Article 12(a).
<a href="#">1988 NI 24.</a>	The Health and Medicines (Northern Ireland) Order 1988.	In Article 4(5) the words “56(2)(d) and”.
<a href="#">1990 NI 3.</a>	The Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990.	Article 5(11).

**PART II REPEALS COMING INTO OPERATION ON A DAY OR DAYS TO BE APPOINTED UNDER ARTICLE 1(2)**

<i>Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
<a href="#">1968 c. 34.</a> (N.I.)	The Children and Young Persons Act (Northern Ireland) 1968.	Section 129(2).
<a href="#">1972 NI 14.</a>	The Health and Personal Social Services (Northern Ireland) Order 1972.	In Article 15(4), the words “Subject to article 99,”.
<a href="#">1976 NI 16.</a>	The Industrial Relations (Northern Ireland) Order 1976.	Article 79(6).
<a href="#">1978 NI 26.</a>	The Health and Personal Social Services (Northern Ireland) Order 1978	Article 11.  Article 15.  In Schedule 1, paragraph 4.
<a href="#">1980 NI 8.</a>	The Social Security (Northern Ireland) Order 1980.	In Schedule 3, paragraph 7.
<a href="#">1984 NI 11.</a>	The Fire Services (Northern Ireland) Order 1984.	Article 49(2)(b).
<a href="#">1986 NI 18.</a>	The Social Security (Northern Ireland) Order 1986.	In Schedule 9, paragraph 31.
<a href="#">1986 NI 20.</a>	The Health and Personal Social Services (Amendment) (Northern Ireland) Order 1986.	Article 1(3).  In Article 2(2) the definitions of “the food legislation” and “the health and safety legislation”.  Articles 3 and 4.
<a href="#">1986 NI 24.</a>	The Health and Personal Social Services and Public Health (Northern Ireland) Order 1986.	Article 9.
<a href="#">1989 NI 6.</a>	The Food (Northern Ireland) Order 1989.	In Schedule 3, paragraph 22.
<a href="#">1990 NI 3.</a>	The Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990.	Article 5(3) and (4), (6) and (7) and (12) to (15).



<i>Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
<a href="#">1991 NI 1.</a>	The Health and Personal Social Services (Northern Ireland) Order 1991.	In Part I of Schedule 5, the amendments to article 90, 92 and 97(1) of the principal Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends and supplements the Health and Personal Social Services (Northern Ireland) Order 1972 relating to the provision of health and personal social services.

The Order amends the constitution of Health and Social Services Boards, provides for the establishment and functions of Health and Social Services trusts and Health and Social Services Councils and removes Crown immunity from Health and Social Services Boards, the Central Services Agency and special health and social services agencies.

The Order also makes new provision for financing the practices of medical practitioners and amends the 1972 Order in relation to the provision of accommodation by Boards and the administration of general health services.

(1)

[1974 c. 28](#)

(2)

[1954 c. 33 \(N.I.\)](#)

(3)

[1972 NI 14](#)

(4)

[1988 NI 24](#)

(5)

[1990 NI 3](#)

(6)

[1965 c. 19 \(N.I.\)](#)

(7)

[1949 c. 88](#)

(8)

[1977 c. 37](#)

(9)

[1977 c. 49](#)

(10)

[1978 c. 29](#)

(11)

[1984 c. 36](#)

(12)

[1990 c. 19](#)

(13)

[1978 c. 29](#)

(14)

[1977 c. 49](#)

(15)

[1990 NI 3](#)

(16)

[1977 c. 49](#)

(17)

[1990 c. 19](#)

(18)

[1954 c. 33 \(N.I.\)](#)

(19)

[1965 c. 19 \(N.I.\)](#)

(20)

[1976 NI 28](#)

(21)

[1982 c. 50](#)

(22)

[1971 c. 32 \(N.I.\)](#)

(23)

[1907 c. 40](#)

(24)

[1965 c. 20 \(N.I.\)](#)

(25)

[1967 c. 36 \(N.I.\)](#)

(26)

[1989 NI 6](#)

(27)

[1979 NI 12](#)

(28)

[1988 NI 24](#)

(29)

S.I. [1991/195](#)

(30)

[1977 c. 49](#)

(31)

[1978 c. 29](#)

(32)

[1972 c. 9 \(N.I.\)](#)

(33)

[1971 c. 17 \(N.I.\)](#)

**(34)**

[1972 c. 9 \(N.I.\)](#)

**(35)**

[1954 c. 33 \(N.I.\)](#)