



2001 CHAPTER 3

PART I  
SOCIAL CARE WORKERS

*Preliminary*

**The Northern Ireland Social Care Council**

1.—(1) There shall be a body corporate to be known as the Northern Ireland Social Care Council (referred to in this Part as “the Council”) which shall have the functions conferred on it by or under this Part or any other statutory provision.

(2) It shall be the duty of the Council to promote—

- (a) high standards of conduct and practice among social care workers; and
- (b) high standards in their training.

(3) The Council shall, in the exercise of its functions, act—

- (a) in accordance with any directions given to it by the Department; and
- (b) under the general guidance of the Department.

(4) Schedule 1 shall have effect with respect to the Council.

**“Social care worker”, etc.**

2.—(1) This section has effect for the purposes of this Part.

(2) “Social care worker” means a person (other than a person excepted by regulations) who—

- (a) engages in relevant social work (referred to in this Part as a “social worker”);
  - (b) is employed at—
    - (i) a children’s home;
    - (ii) a residential care home;
    - (iii) a nursing home;
    - (iv) a day care setting;
    - (v) a residential family centre;
  - (c) manages an establishment of a description mentioned in paragraph (b); or
  - (d) is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) Regulations may provide that persons of any of the following descriptions shall be treated as social care workers—
- (a) a person engaged in work for the purposes of the personal social services functions of a Health and Social Services Board or HSS trust;
  - (b) a person engaged in the provision of personal care for any person;
  - (c) a person who manages, or is employed in, an undertaking which consists of or includes supplying, or providing services for the purpose of supplying, persons to provide personal care;
  - (d) a person engaged in the provision of services which are similar to services which may or must be provided by Health and Social Services Boards or HSS trusts in the exercise of their personal social services functions;
  - (e) a person employed in connection with the discharge of functions of the Department under Article 149 of the [Children \(Northern Ireland\) Order 1995 \(NI 2\)](#) (inspection of children’s homes etc.);
  - (f) a person participating in a course approved by the Council under section 10 for persons wishing to become social workers.
- (4) “Relevant social work” means social work which is required in connection with any health, education, probation or personal social services provided by any person.

### *Registration*

#### **The register**

- 3.—(1) The Council shall maintain a register of—
- (a) social workers; and

- (b) social care workers of any other description specified by order made by the Department.
- (2) There shall be a separate part of the register for social workers and for each description of social care workers so specified.
- (3) The Department may by order provide for a specified part of the register to be closed, as from a date specified by the order, so that on or after that date no further persons can become registered in that part.
- (4) The Department shall consult the Council before making, varying or revoking any order under this section.
- (5) The register may be kept by means of a computer.

#### **Applications for registration**

- 4.—(1) An application for registration under this Part shall be made to the Council in accordance with rules made by it.
- (2) An application under subsection (1) shall specify each part of the register in which registration is sought and such other matters as may be required by the rules.

#### **Grant or refusal of registration**

- 5.—(1) If the Council is satisfied that the applicant—
  - (a) is of good character;
  - (b) is physically and mentally fit to perform the whole or part of the work of persons registered in any part of the register to which his application relates; and
  - (c) satisfies the following conditions,it shall grant the application, either unconditionally or subject to such conditions as it thinks fit; and in any other case it shall refuse it.
- (2) The first condition is that—
  - (a) in the case of an applicant for registration as a social worker—
    - (i) he has successfully completed a course approved by the Council under section 10 for persons wishing to become social workers;
    - (ii) he satisfies the requirements of section 11; or
    - (iii) he satisfies any requirements as to training which the Council may by rules impose in relation to social workers;
  - (b) in the case of an applicant for registration as a social care worker of any other description, he satisfies any requirements as to training which the Council may by rules impose in relation to social care workers of that description.

(3) The second condition is that the applicant satisfies any requirements as to conduct and competence which the Council may by rules impose.

### **Removal, etc. from register**

6.—(1) The Council shall by rules determine circumstances in which, and the means by which—

- (a) a person may be removed from a part of the register, whether or not for a specified period;
- (b) a person who has been removed from a part of the register may be restored to that part;
- (c) a person's registration in a part of the register may be suspended for a specified period;
- (d) the suspension of a person's registration in a part of the register may be terminated;
- (e) an entry in a part of the register may be removed, altered or restored.

(2) The rules shall make provision as to the procedure to be followed, and the rules of evidence to be observed, in proceedings brought for the purposes of the rules, whether before the Council or any committee of the Council.

(3) The rules shall provide for such proceedings to be in public except in such cases (if any) as the rules may specify.

(4) Where a person's registration in a part of the register is suspended under subsection (1)(c), he shall be treated as not being registered in that part notwithstanding that his name still appears in it.

### **Rules about registration**

7. The Council may by rules make provision about the registration of persons under this Part and, in particular—

- (a) as to the keeping of the register;
- (b) as to the documentary and other evidence to be produced by those applying for registration or for additional qualifications to be recorded, or for any entry in the register to be altered or restored;
- (c) for a person's registration to remain effective without limitation of time (subject to removal from the register in accordance with rules made by virtue of section 6) or to lapse after a specified period or in specified cases, or to be subject to renewal as and when provided by the rules.

### **Registration – enforcement**

8.—(1) If a person who is not registered as a social worker in any relevant register, with intent to deceive another—

- (a) takes or uses the title of social worker;
- (b) takes or uses any title or description implying that he is so registered, or in any way holds himself out as so registered,

he is guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) The Department may by regulations make provision for prohibiting persons from working in such positions as may be prescribed unless they are registered in, or in a particular part of, a relevant register.

(4) Regulations under subsection (3) may provide that a contravention of any specified provision of the regulations shall be an offence.

(5) A person guilty of an offence under such regulations shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of this section, a register is a relevant register if it is—

- (a) maintained by the Council; or
- (b) a prescribed register maintained under a provision of the law of England and Wales or Scotland which appears to the Department to correspond to the provisions of this Part.

### *Codes of practice*

#### **Codes of practice**

**9.—**(1) The Council shall prepare and from time to time publish codes of practice laying down—

- (a) standards of conduct and practice expected of social care workers; and
- (b) standards of conduct and practice in relation to social care workers, being standards expected of persons employing or seeking to employ them.

(2) The Council shall—

- (a) keep the codes under review; and
- (b) vary their provisions whenever it considers it appropriate to do so.

(3) Before issuing or varying a code, the Council shall consult any persons it considers appropriate to consult.

(4) A code published by the Council shall be taken into account—

- (a) by the Council in making a decision under this Part; and
- (b) in any proceedings on an appeal against such a decision.

(5) A public body making any decision about the conduct of any social care worker employed by it shall, unless the Department otherwise directs, take into account any code published by the Council.

(6) In subsection (5) “public body” means a body established by a statutory provision.

(7) Any person who asks the Council for a copy of a code shall be entitled to have one.

### *Training*

#### **Approval of courses, etc.**

**10.—**(1) The Council may, in accordance with rules made by it, approve courses in relevant social work for persons who are or wish to become social workers.

(2) An approval given under this section may be either unconditional or subject to such conditions as the Council thinks fit.

(3) Rules made by virtue of this section may in particular make provision—

- (a) about the content of, and methods of completing, courses;
- (b) as to the provision to the Council of information about courses;
- (c) as to the persons who may participate in courses, or in parts of courses specified in the rules;
- (d) as to the numbers of persons who may participate in courses;
- (e) for the award by the Council of certificates of the successful completion of courses;
- (f) about the lapse and renewal of approvals; and
- (g) about the withdrawal of approvals.

(4) The Council may—

- (a) conduct, or make arrangements for the conduct of, examinations in connection with such courses as are mentioned in this section or section 14; and
- (b) carry out, or assist other persons in carrying out, research into matters relevant to training for relevant social work.

(5) A course for persons who wish to become social workers shall not be approved under this section unless the Council considers that it is such as to enable persons completing it to attain the required standard of proficiency in relevant social work.

(6) In subsection (5) “the required standard of proficiency in relevant social work” means the standard described in rules made by the Council.

(7) The Council shall from time to time publish a list of the courses which are approved under this section.

**Qualifications gained outside Northern Ireland**

**11.—(1)** An applicant for registration as a social worker satisfies the requirements of this section if—

- (a) being a national of any EEA State—
  - (i) he has professional qualifications, obtained in an EEA State other than the United Kingdom, which the Department has by order designated as having Community equivalence for the purposes of such registration; and
  - (ii) he satisfies any other requirements which the Council may by rules impose; or
- (b) he has, elsewhere than in Northern Ireland, undergone training in relevant social work and either—
  - (i) that training is recognised by the Council as being to a standard sufficient for such registration; or
  - (ii) it is not so recognised, but the applicant has undergone in Northern Ireland or elsewhere such additional training as the Council may require.

(2) An order under subsection (1)(a) may provide that a professional qualification designated by the order is to be regarded as having Community equivalence for the purposes of registration as a social worker only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled; and different conditions may be prescribed with respect to the same qualification for different circumstances.

(3) Any person who—

- (a) is not a national of an EEA State; but
- (b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68 (on freedom of movement for workers within the Community) or any other enforceable Community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of such a State,

shall be treated for the purposes of subsection (1)(a) as if he were such a national.

(4) In this section—

“EEA State” means a Contracting Party to the EEA Agreement;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“national”, in relation to an EEA State, means the same as it does for the purposes of the Community Treaties.

**Post registration training**

**12.—**(1) The Council may make rules requiring persons registered under this Part in any part of the register to undertake further training.

(2) The rules may, in particular, make provision with respect to persons who fail to comply with any requirements of rules made by the Council, including provision for their registration to cease to have effect.

(3) Before making, or varying, any rules by virtue of this section the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.

**Visitors for certain social work courses**

**13.—**(1) The Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—

(a) any relevant course (or part of such a course) is, or is proposed to be, given; or

(b) any examination is, or is proposed to be, held in connection with any relevant course.

(2) The rules may make provision—

(a) for the appointment of visitors;

(b) for reports to be made by visitors on—

(i) the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at the place or by the institution visited; and

(ii) such other matters as may be specified in the rules;

(c) for the payment by the Council of fees, allowances and expenses to persons appointed as visitors;

(d) for such persons to be treated, for the purposes of Schedule 1, as members of the Council's staff.

(3) In subsection (1) "relevant course" means—

(a) any course for which approval by the Council has been given, or is being sought, under section 10; or

(b) any training which a person registered as a social worker may be required to undergo after registration.

**Functions of the Department**

**14.—**(1) The Department has the function of—



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*Status: This is the original version (as it was originally enacted).*

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- (a) ascertaining what training is required by persons who are or wish to become social care workers;
  - (b) ascertaining what financial and other assistance is required for promoting such training;
  - (c) encouraging the provision of such assistance;
  - (d) drawing up occupational standards for social care workers.
- (2) The Department shall encourage persons to take part in courses approved by the Council under section 10 and other courses relevant to the training of persons who are or wish to become social care workers.
- (3) If it appears to the Department that adequate provision is not being made for training persons who are or wish to become social care workers, the Department may provide, or secure the provision of, courses for that purpose.
- (4) The Department may, upon such terms and subject to such conditions as it considers appropriate—
- (a) make grants, and pay travelling and other allowances, to persons resident in Northern Ireland in order to secure their training in the work of social care workers;
  - (b) make grants to organisations providing training in the work of social care workers.
- (5) Any functions of the Department under this section—
- (a) may be delegated by it to the Council; or
  - (b) may be exercised by any person, or by employees of any person, authorised to do so by the Department.
- (6) Articles 13 to 15 of the [Deregulation and Contracting Out \(Northern Ireland\) Order 1996 \(NI 11\)](#) apply in relation to an authorisation given under subsection (5)(b) as they apply in relation to an authorisation given under Part III of that Order; and in subsection (5)(b) “employee” has the same meaning as in that Order.

#### *Miscellaneous and supplemental*

#### **Appeals to the Social Care Tribunal**

- 15.**—(1) Registered Homes Tribunals shall be known instead as Social Care Tribunals.
- (2) An appeal against a decision of the Council under this Part in respect of registration shall lie to a Social Care Tribunal.
- (3) On an appeal against a decision, a Social Care Tribunal may confirm the decision or direct that it shall not have effect.

(4) A Social Care Tribunal shall also have power on an appeal against a decision—

- (a) to vary any condition for the time being in force in respect of the person to whom the appeal relates;
- (b) to direct that any such condition shall cease to have effect; or
- (c) to direct that any such condition as it thinks fit shall have effect in respect of that person.

(5) The Council shall comply with any direction given by a Social Care Tribunal under this section.

(6) In the Registered Homes Order—

- (a) for “Registered Homes Tribunal” (wherever occurring) there shall be substituted “Social Care Tribunal”;
- (b) for “Registered Homes Tribunals” (wherever occurring) there shall be substituted “Social Care Tribunals”;
- (c) in Article 30(1) after “1995” there shall be inserted “or under Part I of the Health and Personal Social Services Act (Northern Ireland) 2001”;
- (d) Article 34 applies in relation to appeals under this section with the substitution for references to the Board of references to the Council.

(7) In the [Children \(Northern Ireland\) Order 1995 \(NI 2\)](#) in Articles 78(3), 87(1), 94(3) and 103(1) for “Registered Homes Tribunal” there shall be substituted “Social Care Tribunal”.

#### **Publication, etc. of register**

**16.—**(1) The Council shall publish the register in such manner, and at such times, as it considers appropriate.

(2) Any person who asks the Council for a copy of, or of an extract from, the register shall be entitled to have one.

#### **Cesser of functions of CCETSW**

**17.** The Central Council for Education and Training in Social Work shall cease to exercise in relation to Northern Ireland the functions conferred on it by or under section 10 of the Health and Social Services and Social Security Adjudications Act [1983 \(c. 41\)](#).

#### **Rules**

**18.—**(1) Rules made by the Council under this Part may make provision for the payment of reasonable fees to the Council in connection with the discharge of the Council’s functions.

(2) In particular, the rules may make provision for the payment of such fees in connection with—

- (a) registration (including applications for registration or for amendment of the register);
- (b) the approval of courses under section 10;
- (c) the provision of training;
- (d) the provision of copies of codes of practice or copies of, or extracts, from the register,

including provision requiring persons registered under this Part to pay a periodic fee to the Council of such amount, and at such time, as the rules may specify.

(3) No rules shall be made by the Council under this Part without the consent of the Department.

#### **Default powers of Department**

**19.—**(1) The powers conferred by this section are exercisable by the Department if it is satisfied that the Council—

- (a) has without reasonable excuse failed to discharge any of its functions; or
- (b) in discharging any of its functions, has without reasonable excuse failed to comply with any directions or guidance given by it under section 1(3) in relation to those functions.

(2) The Department may—

- (a) make an order declaring the Council to be in default; and
- (b) direct the Council to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) If the Council fails to comply with the Department's direction under subsection (2), the Department may—

- (a) discharge the functions to which the direction relates itself; or
- (b) make arrangements for any other person to discharge those functions on its behalf.

#### **Interpretation of this Part – “children’s home”**

**20.—**(1) Subject to the provisions of this section, for the purposes of this Part an establishment is a children’s home if it provides care and accommodation for children.

(2) An establishment is not a children’s home merely because a child is cared for and accommodated there by a parent or relative of his or by a person who fosters him (within the meaning of Article 119(3) of the [Children \(Northern Ireland\) Order 1995 \(NI 2\)](#)).

- (3) An establishment is not a children's home if it is—
- (a) a residential care home;
  - (b) a hospital or nursing home;
  - (c) a school at which board and lodging are not provided for pupils;
  - (d) a residential family centre;
  - (e) used primarily for or in connection with the provision of cultural, recreational, leisure, social or physical activities; or
  - (f) excepted by regulations.

#### **Interpretation of this Part – “residential care home” and “nursing home”**

**21.**—(1) Subject to subsections (3) and (4), in this Part “residential care home” has the meaning given by Article 3 of the Registered Homes Order.

(2) Subject to subsections (3) and (5), in this Part “nursing home” has the meaning given by Article 16 of the Registered Homes Order.

(3) An establishment is not a residential care home or a nursing home if it is a children's home.

(4) For the purposes of subsection (1), Article 3 of the Registered Homes Order shall have effect with the omission of—

- (a) paragraph (2)(d); and
- (b) paragraph (2)(f).

(5) For the purposes of subsection (2), Article 16 of the Registered Homes Order shall have effect with the omission of—

- (a) paragraph (1)(b) and (c); and
- (b) paragraph (2)(b) and (d).

#### **Interpretation of this Part – general**

**22.** In this Part—

“child” means a person under the age of 18;

“day care setting” means a place where persons in need of personal care may attend for the purposes of rehabilitation or counselling, but where they are not provided with board;

“domiciliary care agency” means an undertaking (other than one of a description excepted by regulations) which consists of or includes arranging the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance;

“personal care” has the same meaning as in the Registered Homes Order, but does not include any prescribed activity;

“the Registered Homes Order” means the [Registered Homes \(Northern Ireland\) Order 1992 \(NI 20\)](#);

“residential family centre” means any establishment (other than one of a description excepted by regulations) at which—

- (a) accommodation is provided for children and their parents;
- (b) the parents' capacity to respond to the children's needs and to safeguard their welfare is monitored or assessed; and
- (c) the parents are given such advice, guidance or counselling as is considered necessary,

and for the purposes of this definition “parent”, in relation to a child, includes any person who is looking after him;

“school” has the same meaning as in the [Education and Libraries \(Northern Ireland\) Order 1986 \(NI 3\)](#);

“undertaking” includes any business or profession and—

- (a) in relation to a public body, includes the exercise of any functions of that body;
- (b) in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body.

## PART II

### RECOVERY OF CHARGES IN CONNECTION WITH THE TREATMENT OF ROAD TRAFFIC CASUALTIES

#### *Payment for hospital treatment*

#### **Payment for hospital treatment of traffic casualties**

**23.—**(1) This section applies if—

- (a) a person (“the traffic casualty”) has suffered injury, or has suffered injury and died, as a result of the use of a motor vehicle on a road or other public place;
- (b) a compensation payment is made in respect of that injury or death; and
- (c) the traffic casualty has received health services treatment at a health services hospital in respect of his injury.

(2) The person making the compensation payment is liable to pay the appropriate health services charges to the Department in respect of the treatment.

(3) “Compensation payment” means—

- (a) a payment made by an authorised insurer under, or in consequence of, a policy issued under Article 92 of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#);
  - (b) a payment made by the owner of the vehicle, in a case where the vehicle is one in relation to the use of which a security under Part VIII of that Order is in force;
  - (c) a payment made by the owner of the vehicle who has made a deposit under that Part; or
  - (d) a payment made in pursuance of a compensation scheme for motor accidents.
- (4) A payment is a compensation payment whether or not it is made—
- (a) in the United Kingdom; or
  - (b) voluntarily, or in pursuance of a court order or an agreement, or otherwise.
- (5) Regulations may provide that a payment of a prescribed description is not to count as a compensation payment, either generally or in such circumstances as may be prescribed.
- (6) “Health services treatment” means any treatment (including any examination of the traffic casualty), other than—
- (a) treatment provided by virtue of Article 31 of the principal Order or paragraph 14 of Schedule 3 to the 1991 Order (accommodation and services for private patients); or
  - (b) treatment provided at a health services hospital by virtue of Article 5(4) of the principal Order (permission for use of health services accommodation or facilities in private practice).
- (7) “The appropriate health services charges” means the amount specified in a certificate of health services charges—
- (a) issued under section 24 in respect of the traffic casualty, to the person making the compensation payment; and
  - (b) in force.
- (8) Subject to subsection (9), this section applies in relation to any compensation payment made after the date on which this section comes into operation but not to one payable under a court order, or agreement, made before that date.
- (9) In its application to a compensation payment made in respect of an injury or death resulting from an incident occurring before the coming into operation of this Part, this section has effect as if in subsection (6) after the words “any treatment” there were inserted the words “as an in-patient”.
- (10) For the purposes of this Part, it is irrelevant whether a compensation payment is made with or without an admission of liability.

*Certificates of health services charges***Applications for certificates of health services charges**

**24.—**(1) Before a person makes a compensation payment in respect of the injury or death of a traffic casualty, he may apply to the Department for a certificate under this section.

(2) If the Department receives an application under subsection (1), it shall arrange for a certificate to be issued as soon as is reasonably practicable.

(3) Such a certificate is to be known as a “certificate of health services charges” but is referred to generally in this Part as a “certificate”.

(4) A certificate may provide that it is to remain in force—

- (a) until a specified date;
- (b) until the occurrence of a specified event; or
- (c) indefinitely.

(5) A person may apply under subsection (1) for a fresh certificate from time to time.

(6) Subsection (2) does not require the Department to arrange for a fresh certificate to be issued to a person applying under subsection (5) if, when the application is received, a certificate issued to the applicant in respect of the casualty is still in force; but the Department may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate.

(7) If a certificate expires, the Department may arrange for a fresh certificate to be issued without an application having to be made.

(8) In the circumstances mentioned in subsection (9), a person who has made a compensation payment in respect of the injury or death of a traffic casualty shall apply to the Department for a certificate.

(9) The circumstances are that—

- (a) at the time the payment is made—
  - (i) no certificate has been issued to him in respect of the casualty; or
  - (ii) if such a certificate has been issued to him, it is no longer in force; and
- (b) no application for a certificate has been made by him during the prescribed period ending immediately before the day on which the compensation payment is made.

(10) An application for a certificate shall be made in the prescribed manner and, in the case of an application under subsection (8), within the prescribed period.

(11) On receiving an application under subsection (8), the Department shall arrange for a certificate to be issued as soon as is reasonably practicable.

(12) The Department may arrange for certificates to be issued by electronic means.

#### **Information contained in certificates**

**25.—**(1) A certificate shall specify the amount for which the person to whom it is issued is liable under section 23(2).

(2) The amount to be specified is to be that set out in, or determined in accordance with, regulations.

(3) But if a certificate relates to a traffic casualty who has not received health services treatment at a health services hospital in respect of his injury, it shall indicate that no amount is payable to the Department by reference to that certificate.

(4) Regulations under subsection (2) may, in particular, provide—

(a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum;

(b) for different amounts to be specified in respect of different circumstances, including, in particular, whether or not the treatment concerned was in respect of injuries resulting from an incident occurring before 2nd July 1997;

(c) for cases in which a traffic casualty receives treatment at two or more health services hospitals;

(d) for cases in which liability under section 23(2) is to be apportioned between two or more persons making compensation payments in respect of the same traffic casualty.

(5) Regulations under subsection (2) may be made so as to apply to any certificate issued after the time the regulations come into operation, other than one relating to a compensation payment made before that time.

(6) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount specified in the certificate has been determined as may be prescribed, if he applies to the Department for those particulars.

#### *Recovery of health services charges*

#### **Payment of health services charges**

**26.—**(1) If the certificate by reference to which an amount payable under section 23(2) is determined is issued before the settlement date, that amount shall be paid before the end of the period of 14 days beginning with and including the settlement date.

(2) If the certificate by reference to which an amount payable under section 23(2) is determined is issued on or after the settlement date, that amount



shall be paid before the end of the period of 14 days beginning with and including the day on which the certificate is issued.

(3) “Settlement date” means the date on which the compensation payment is made.

(4) This section is subject to section 27(2).

### **Recovery of health services charges**

**27.—**(1) This section applies if a person has made a compensation payment and either—

- (a) subsection (8) of section 24 applies but he has not applied for a certificate as required by that subsection; or
- (b) he has not made payment, in full, of any amount due under section 23(2) by the end of the period allowed under section 26.

(2) The Department may—

- (a) in a case within subsection (1)(a), issue the person who made the compensation payment with a certificate; and
- (b) in a case within subsection (1)(b), issue him with a copy of the certificate or (if more than one has been issued) the most recent one,

and, in either case, issue him with a demand that payment of any amount due under section 23(2) be made immediately.

(3) The Department may recover the amount for which a demand for payment is made under subsection (2) from the person who made the compensation payment.

(4) Any amount recoverable shall, if the county court so orders, be enforceable as if it were payable under an order of that court.

(5) A document which states that it is a record of the amount recoverable under subsection (3) is conclusive evidence that that amount is so recoverable if it is signed by a person authorised to do so by the Department.

(6) For the purposes of subsection (5), a document purporting to be signed by a person authorised to do so by the Department is to be treated as so signed unless the contrary is proved.

### *Reviews and appeals*

#### **Review of certificates**

**28.—**(1) A certificate may be reviewed by the Department—

- (a) either within the prescribed period or in prescribed cases or circumstances; and

- (b) either on an application made for the purpose or on its own initiative.
- (2) On a review under this section, the Department may—
  - (a) confirm the certificate;
  - (b) issue a fresh certificate containing such variations as it considers appropriate; or
  - (c) revoke the certificate.

### **Appeals against a certificate**

**29.**—(1) An appeal against a certificate may be made by the person to whom the certificate was issued on the ground—

- (a) that an amount specified in the certificate is incorrect;
  - (b) that an amount so specified takes into account treatment which is not health services treatment received by the traffic casualty, in respect of his injury, at a health services hospital; or
  - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) No appeal may be made until—
- (a) the claim giving rise to the compensation payment has been finally disposed of; and
  - (b) payment of the amount specified in the certificate has been made to the Department.

(3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982 (c. 53), (orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

- (4) Regulations may make provision—
- (a) as to the manner in which, and the time within which, an appeal may be made;
  - (b) as to the procedure to be followed where an appeal is made; and
  - (c) for the purpose of enabling an appeal to be treated as an application for a review under section 28.

### **Appeal tribunals**

**30.**—(1) The Department shall refer an appeal to an appeal tribunal.

(2) In determining an appeal, the tribunal shall take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury or death in question.

- (3) On an appeal, the tribunal may—
- (a) confirm the amount specified in the certificate;
  - (b) specify any variations which are to be made on the issue of a fresh certificate under subsection (4); or
  - (c) declare that the certificate is to be revoked.
- (4) When the Department has received the decision of the tribunal on an appeal, it shall in accordance with that decision—
- (a) confirm the certificate against which the appeal was brought;
  - (b) issue a fresh certificate; or
  - (c) revoke the certificate.
- (5) Regulations under section 29 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under subsection (1).
- (6) In this section and section 31 “appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the [Social Security \(Northern Ireland\) Order 1998 \(NI 10\)](#).

#### **Appeal to the court on point of law**

**31.** Regulations may provide that an appeal lies to the High Court on any point of law arising from a decision of an appeal tribunal under section 30.

#### **Reviews and appeals: supplementary**

**32.—**(1) This section applies in any case in which a fresh certificate is issued as a result of a review under section 28 or an appeal.

(2) Regulations may provide that where—

- (a) a person has made one or more payments to the Department under section 23; and
- (b) in consequence of the review or appeal, it appears that the amount paid is more than the amount that ought to have been paid,

the difference shall be repaid by such person or persons as may be prescribed.

(3) Regulations may provide that where—

- (a) a person has made one or more payments to the Department under section 23; and
- (b) in consequence of the review or appeal, it appears that the amount paid is less than the amount that ought to have been paid,

that person shall pay the difference to the Department.

(4) Regulations under this section—

- (a) may provide for the payment by any person of any balance or the recovery from any person of any excess, and may make such provision by modifying this Part;
- (b) may provide for the Department of Health, Social Services and Public Safety to determine any matter requiring determination under or in consequence of the regulations.

### *Information*

#### **Provision of information**

**33.**—(1) This section applies if a claim for a compensation payment is made in respect of any injury suffered by, or the death of, a traffic casualty.

(2) The following persons shall give the Department such information with respect to the circumstances of the case as may be prescribed—

- (a) the person against whom the claim is made and anyone acting on behalf of that person;
- (b) anyone not within paragraph (a) who is, or is alleged to be, liable in respect of the injury or death;
- (c) the traffic casualty or, if the traffic casualty has died, his personal representative;
- (d) if the claim is not made by the traffic casualty, the person by whom it is made;
- (e) anyone acting on behalf of a person within paragraph (b), (c) or (d);
- (f) the responsible body of each health services hospital at which the traffic casualty has received health services treatment in respect of his injury.

(3) “Claim” and “person against whom the claim is made” have such meanings as may be prescribed.

(4) A person who is required to give information under this section shall do so—

- (a) in the prescribed manner; and
- (b) within the prescribed period (which in the case of a person within subsection (2)(b), (c), (d), (e) or (f) shall be a period beginning with the day on which the Department asks him for the information).

(5) Regulations under this section may, in particular, require the provision of information about any health services treatment which a traffic casualty has received at a health services hospital.

#### **Use of information held by the Department**

**34.**—(1) Subsection (2) applies to information which is held—

- (a) by the Department; or
- (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under the [Social Security \(Recovery of Benefits\) \(Northern Ireland\) Order 1997 \(NI 12\)](#).

- (2) The information—
  - (a) may be used for the purposes of, or for any purpose connected with, the exercise of functions under this Part; and
  - (b) may be supplied to, or to a person providing services to, the Department for use for those purposes.
- (3) Subsection (4) applies to information which is held—
  - (a) by the Department; or
  - (b) by a person providing services to the Department in connection with the provision of those services,

for the purposes of, or for any purpose connected with, the exercise of functions under this Part.

- (4) The information—
  - (a) may be used for the purposes of, or for any purpose connected with, the exercise of functions under the [Social Security \(Recovery of Benefits\) \(Northern Ireland\) Order 1997 \(NI 12\)](#); and
  - (b) may be supplied to, or to a person providing services to, the Department for use for those purposes.

### *Payments to hospitals*

#### **Payment of health services charges to hospitals**

**35.—**(1) If the Department receives a payment of health services charges under section 23(2), it shall pay the amount received to the responsible body of the health services hospital at which the treatment, in respect of which the payment was made, was given.

(2) If a payment received under section 23(2) relates to treatment at more than one health services hospital, the Department shall, for the purposes of subsection (1), divide the payment among the responsible bodies of the hospitals concerned in such manner as it considers appropriate.

(3) Subsection (1) does not apply to any amount received by the Department under section 23(2) which it is required to repay in accordance with regulations under section 32(2).

- (4) Regulations under this section may—

- (a) make provision for the manner in which and intervals at which any payments due under this section are to be made;
- (b) make provision for cases where the responsible body of the health services hospital concerned has ceased to exist (including provision modifying this Part).

### *Miscellaneous and general*

#### **Regulations governing payments into court, etc.**

**36.—**(1) Regulations may make provision (including provision modifying this Part)—

- (a) for cases to which section 23(2) applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of the same injury or death;
- (b) for cases to which section 23(2) applies in which an agreement is entered into for the making of—
  - (i) periodical compensation payments (whether of an income or capital nature); or
  - (ii) periodical compensation payments and lump sum compensation payments;
- (c) for cases in which the compensation payment to which section 23(2) applies is an interim payment of damages which a court orders to be repaid.

(2) Regulations may make provision modifying the application of this Part in relation to cases in which a payment into court is made and, in particular, may provide—

- (a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment;
- (b) for application for, and issue of, certificates.

#### **Interpretation of this Part**

**37.** In this Part—

- “appeal” means an appeal under section 29;
- “appropriate health services charges” has the meaning given in section 23(7);
- “authorised insurer” has the meaning given in Article 101 of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#);
- “certificate” means a certificate of health services charges issued under section 24;
- “compensation payment” has the meaning given in section 23;

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“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to be caused, by uninsured or unidentified persons;

“the Department” means the Department for Social Development;

“health services hospital” means a hospital which provides health services;

“health services treatment” has the meaning given in section 23(6);

“motor vehicle” has the meaning given in Article 3(1) of the [Road Traffic \(Northern Ireland\) Order 1995 \(NI 18\)](#) (read with Articles 4(1), 5, 6 and 105 of that Order);

“owner” has the meaning given in Article 2(2) of the Road Traffic (Northern Ireland) Order 1995;

“regulations” means regulations made by the Department of Health, Social Services and Public Safety;

“responsible body” in respect of a health services hospital, means—

- (a) in the case of a hospital vested in an HSS trust, the trust; and
- (b) in any other case, the body responsible for the management of the hospital;

“road” has the meaning given in Article 2(2) of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#);

“traffic casualty” has the meaning given in section 23(1).

### **Consequential amendments**

**38.**—(1) Article 99 of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#) (liability of insurers, etc., for expenses of hospital treatment) shall cease to have effect.

(2) In Article 101 of that Order (meaning of “authorised insurer”), in paragraph (2)—

- (a) after “purposes of this Part” there shall be inserted “or Part II of the Health and Personal Social Services Act (Northern Ireland) 2001”;
- (b) for the words from “Article 99” to “treatment)” there shall be substituted “section 23 of the Health and Personal Social Services Act (Northern Ireland) 2001 (payment for hospital treatment of traffic casualties)”.

## PART III

### HEALTH AND PERSONAL SOCIAL SERVICES – GENERAL

#### *Fund-holding practices*

#### **Repeal of law about fund-holding practices**

**39.** In the 1991 Order, Articles 17 to 20 (which make provision in relation to fund-holding practices) shall cease to have effect.

#### *Local administration*

#### **Remuneration for Part VI services**

**40.—(1)** For Article 64A of the principal Order (regulations as to remuneration for Part VI services) there shall be substituted—

#### **“Remuneration for Part VI services**

**64A.—(1)** The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).

(2) For the purposes of this Article and Article 64B determining authorities are—

- (a) the Department; and
- (b) so far as authorised by the Department to exercise the functions of determining authorities, any Health and Social Services Board or other person appointed by the Department in an instrument (referred to in this Article and Article 64B as an instrument of appointment).

(3) An instrument of appointment—

- (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
- (b) may be contained in regulations.

(4) Subject to this Article and Article 64B, regulations may make provision about determining remuneration under paragraph (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).



- (5) Regulations may provide—
- (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under paragraph (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of sub-paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this Article or Article 64B to a determination is to a determination of remuneration under paragraph (1).

#### **Part VI remuneration: supplementary**

- 64B.**—(1) Before a determination is made by the Department which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in Article 64A(1), the Department—
- (a) shall consult a body appearing to it to be representative of persons to whose remuneration the determination would relate; and
  - (b) may consult such other persons as it considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.

- (3) Determinations may—
- (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
- (a) to correct an error; or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
- (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to Article 57(1), remuneration under Article 64A may consist of payments by way of—
- (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,
- and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.
- (8) The matters which may be reserved include in particular—
- (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
- (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in Article 64A(1) to which the determination will relate or of any category falling within that description;

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- (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;
- (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
- (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;
- (e) the desirability of promoting services which are—
  - (i) economic and efficient; and
  - (ii) of an appropriate standard.

(10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in Article 64A(1), the reference in paragraph (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”.

(2) This section and the associated repeals in Schedule 5 have effect in relation to—

- (a) the making of determinations after the coming into operation of this section; and
- (b) the variation or revocation after the coming into operation of this section of determinations whenever made,

and in this subsection “determinations” means determinations under Part VI of the principal Order of the remuneration to be paid to persons who provide services mentioned in Article 64A(1) of that Order.

### **Indemnity cover for Part VI services**

**41.—**(1) After Article 64B of the principal Order there shall be inserted the following Article—

#### **“Indemnity cover**

**64C.—**(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part VI practitioners hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

- (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;

- (b) for the removal from a list prepared by a Health and Social Services Board of a Part VI practitioner who does not within a prescribed period after the making of a request by the Board in the prescribed manner satisfy that Board that he holds approved indemnity cover.

(3) For the purposes of this Article—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Department or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part VI practitioner (or person who proposes to provide Part VI services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

- (a) arises out of the provision of Part VI services in accordance with arrangements made by him with a Health and Social Services Board under this Part; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in paragraph 1(8) of Schedule 11;

“Part VI practitioner” means a person whose name is on a list;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

- (a) in a form identified in accordance with the regulations in relation to persons of that description; and
- (b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.”.

(2) In Article 2(2) of the principal Order (interpretation) after the definition of “parental responsibility” there shall be inserted—

““Part VI services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;”.

(3) In Article 61(2)(b) of the principal Order (arrangements for general dental services) after “paragraphs (2A) and (2AA)” there shall be inserted “, to any provision made under Article 64C”.

(4) In Article 62(2)(b) of the principal Order (arrangements for general ophthalmic services) after “subject” there shall be inserted “to any provision made under Article 64C and”.

### **Local representative committees**

**42.** For Article 55 of the principal Order (local representative committees) there shall be substituted—

#### **“Recognition of local representative committees**

**55.—(1)** A Health and Social Services Board may recognise a committee formed for its area which it is satisfied is representative of—

- (a) the medical practitioners providing general medical services or general ophthalmic services in that area;
- (b) those medical practitioners and the deputy medical practitioners for that area; or
- (c) the medical practitioners mentioned in—
  - (i) sub-paragraph (a); or
  - (ii) sub-paragraph (b),

and the Article 15B medical practitioners for that area,

and any committee so recognised shall be called the Local Medical Committee for the area.

(2) A Health and Social Services Board may recognise a committee formed for its area which it is satisfied is representative of—

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
  - (i) sub-paragraph (a); or
  - (ii) sub-paragraph (b),

and the Article 15B dental practitioners for that area,

and any committee so recognised shall be called the Local Dental Committee for the area.

(3) Where a Health and Social Services Board is satisfied that a committee formed for its area is representative—

(a) of the ophthalmic opticians providing general ophthalmic services in that area, or

(b) of the persons providing pharmaceutical services in that area,

the Health and Social Services Board may recognise that committee; and any committee so recognised shall be called the Local Optical Committee or the Local Pharmaceutical Committee, as the case may be, for the area concerned.

(4) Any committee recognised under this Article may with the approval of the Health and Social Services Board delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(5) For the purposes of this Article and Article 55A, a person who meets the condition in paragraph (6)—

(a) is a deputy medical practitioner for the area of a Health and Social Services Board if he is a medical practitioner who assists a medical practitioner providing general medical services in that area in the provision of those services but is not himself on a list;

(b) is an Article 15B medical practitioner for the area of a Health and Social Services Board if he is a medical practitioner who provides or performs personal medical services in accordance with arrangements made under Article 15B by the Health and Social Services Board (whether with himself or another);

(c) is a deputy dental practitioner for the area of a Health and Social Services Board if he is a dental practitioner who assists a dental practitioner providing general dental services in that area in the provision of those services but is not himself on a list;

(d) is an Article 15B dental practitioner for the area of a Health and Social Services Board if he is a dental practitioner who provides or performs personal dental services in accordance with arrangements made under Article 15B by the Health and Social Services Board (whether with himself or another).

(6) The condition referred to in paragraph (5) is that the person concerned has notified the Health and Social Services Board that he wishes to be represented under this Article by the appropriate committee for its area (and has not notified it that he wishes to cease to be so represented).

(7) For the purposes of paragraph (5)—

(a) a person is to be treated as assisting a medical practitioner or dental practitioner in the provision of services if he is employed by that

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practitioner for that purpose or if he acts as his deputy in providing those services; and

(b) “list” has the same meaning as in paragraph 1(8) of Schedule 11.

### **Functions of local representative committees**

**55A.**—(1) Regulations may require a Health and Social Services Board—

- (a) in the exercise of its functions under this Part to consult committees recognised by it under Article 55;
- (b) in the exercise of any of its functions which relate to arrangements under Article 15B to consult committees recognised by it under Article 55(1)(c) or (2)(c),

on such occasions and to such extent as may be prescribed.

(2) The power conferred by paragraph (1) is without prejudice to any other power to require a Health and Social Services Board to consult any committee recognised under Article 55.

(3) Committees recognised under Article 55 shall exercise such other functions as may be prescribed.

(4) A committee recognised for an area under paragraph (1)(b) or (c) or (2)(b) or (c) of Article 55 shall, in respect of each year, determine the amount of its administrative expenses for that year attributable—

- (a) in the case of a committee recognised under paragraph (1)(b) or (c) (ii) of that Article, to the deputy medical practitioners for the area;
- (b) in the case of a committee recognised under paragraph (1)(c) of that Article, to the Article 15B medical practitioners for the area;
- (c) in the case of a committee recognised under paragraph (2)(b) or (c) (ii) of that Article, to the deputy dental practitioners for the area;
- (d) in the case of a committee recognised under paragraph (2)(c) of that Article, to the Article 15B dental practitioners for the area.

(5) A Health and Social Services Board may, on the request of any committee recognised under Article 55 for its area, allot to that committee such sums for defraying the committee’s administrative expenses as may be determined by the Board.

(6) Any sums so allotted shall be out of the moneys available to the Health and Social Services Board for the remuneration of persons of whom the committee so recognised is representative and who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services, as the case may be, under this Part.

(7) The amount of any such sums shall be deducted from the remuneration of those persons in such manner as may be determined by the Health and Social Services Board.

(8) Where a committee has made a determination under paragraph (4), it shall apportion the amount so determined among the deputy medical practitioners, Article 15B medical practitioners, deputy dental practitioners or Article 15B dental practitioners, as the case may be, for the area and each such practitioner shall pay in accordance with the committee's directions the amount so apportioned to him.

(9) References in this Article to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in paragraph (5) to a committee's administrative expenses does not include so much of the committee's administrative expenses as are determined under paragraph (4) to be attributable to any practitioners mentioned in that paragraph."

#### *Health and Social Services trusts*

#### **Establishment orders**

**43.—**(1) In Article 10 of the 1991 Order (HSS trusts) for paragraphs (1) and (2) there shall be substituted—

“(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 provide goods and services for the purposes of the health and personal social services; or
- (b) to exercise, on behalf of Health and Social Services Boards, such functions as are so exercisable by virtue of authorisations for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994.

(2) Before making an order under paragraph (1), the Department shall consult—

- (a) such Health and Social Services Councils; and
- (b) such other persons and bodies,

as the Department considers appropriate.”

(2) In Article 10 of the 1991 Order (HSS trusts) for paragraph (5) there shall be substituted—

“(5) The functions which may be specified in an order under paragraph (1) include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.”



(3) In Article 2(2) of the 1991 Order (interpretation) after the definition of “the principal Order” there shall be inserted—

““provide” includes manage;”.

(4) Any order under Article 10(1) of that Order—

(a) is to be treated as always having had effect with the omission of any obligation for the HSS trust to which the order relates to own land specified in the order; and

(b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.

(5) Any restriction preventing the acquisition of any land by any HSS trust (including an HSS trust dissolved before the coming into operation of this section) merely because the land did not comprise a hospital or other establishment or facility previously managed or provided by a relevant body (within the meaning of Article 10(3) of the 1991 Order) is to be treated as never having had effect.

(6) An order under section 58 may—

(a) provide for any provision made by it for the purposes of, in consequence of or for giving full effect to this section to be treated as having had effect from a time before the coming into operation of this section;

(b) make such provision about an HSS trust dissolved before the coming into operation of this section.

(7) In Article 16(1) of the 1991 Order (trust funds and trustees for HSS trusts) for “which is owned and managed” there shall be substituted “at or from which services are provided”.

(8) In paragraph 3(2) of Schedule 3 to that Order (establishment orders), for “assume responsibility for the ownership and management of” there shall be substituted “provide services at”.

(9) In paragraph 16(c) of that Schedule (general powers of HSS trusts) for “which is owned and managed” there shall be substituted “at or from which services are provided”.

(10) The 1991 Order is to be treated as always having had effect subject to the amendments made by this section.

### **Exercise of powers**

**44.—**(1) For Article 10(8) of the 1991 Order (restrictions on exercise of certain powers) there shall be substituted—

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

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

(2) In Schedule 3 to the 1991 Order (HSS trusts) for paragraph 6 there shall be substituted—

“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.

(2) An HSS trust shall comply with any directions given to it by the Department about the exercise of the trust’s functions.

(3) Any directions under this paragraph with respect to—

- (a) the power conferred on an HSS trust by paragraph 1 of Schedule 4; or
- (b) the maximum amount which an HSS trust may invest in any investments or class of investments,

may be given only with the consent of the Department of Finance and Personnel.”.

(3) Paragraph 16 of that Schedule (general powers of HSS trusts) shall be renumbered as sub-paragraph (1) of that paragraph, and

- (a) in that sub-paragraph head (d) (general power to employ staff) shall cease to have effect; and
- (b) after that sub-paragraph there shall be added —

“(2) An HSS trust may employ such staff at it thinks fit.

(3) Subject to any directions given by the Department under paragraph 6, an HSS trust may—

- (a) pay its staff such remuneration and allowances; and
- (b) employ them on such other terms and conditions, as it thinks fit.”.

### **Public dividend capital**

**45.—**(1) Article 14 of the 1991 Order (originating capital debt of, and other financial provisions relating to, HSS trusts) shall be amended in accordance with subsections (2) to (6).

(2) In paragraphs (1), (2) and (3), for “originating capital debt” there shall be substituted “originating capital”.

(3) For paragraph (4) there shall be substituted—

“(4) An HSS trust’s originating capital shall be public dividend capital.”.

(4) Paragraphs (5) and (6) shall cease to have effect.

(5) In paragraph (7) for the words from “the terms” to the end there shall be substituted “—

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

(6) In paragraph (8) the words “, (5), (6)” shall cease to have effect.

(7) In Schedule 4 to the 1991 Order—

- (a) in paragraph 3 (limits on indebtedness), sub-paragraph (2) shall cease to have effect;
- (b) in paragraph 4 (additional public dividend capital), sub-paragraph (2) shall cease to have effect.

#### **Existing HSS trusts: conversion of initial loan**

**46.—**(1) This section applies to any HSS trust in existence immediately before commencement.

(2) On commencement so much of the originating capital debt of the HSS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the HSS trust and accordingly is public dividend capital.

(3) Any reference in any statutory provision, instrument or other document to the originating capital debt of the HSS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.

(4) The Department may with the consent of the Department of Finance and Personnel determine the amount and time for payment of interest on the HSS trust’s initial loan in respect of the period ending with commencement.

(5) In this section—

“commencement” means the coming into operation of this section;

“initial loan” means that part of a trust’s originating capital debt other than public dividend capital.

#### **Borrowing, surplus funds and investment**

**47.—**(1) Schedule 4 to the 1991 Order shall be amended as follows.

(2) In paragraph 1(1) (borrowing powers of HSS trusts) after “Subject to” there shall be inserted “any direction given by the Department under paragraph 6 of Schedule 3, to”.

(3) In paragraph 1 for sub-paragraphs (3) to (6) there shall be substituted—

“(3) It shall be for the Department, with the consent of the Department of Finance and Personnel, to determine the terms of any loan made by it to an HSS trust (including terms as to the payment of interest, if any).”.

(4) In paragraph 5 (surplus funds)—

(a) for “amount standing in the reserves of an HSS trust” there shall be substituted “sum held by an HSS trust otherwise than as trustee”;

(b) for “that amount” there shall be substituted “that sum”.

(5) For paragraph 6 (investment) there shall be substituted—

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

*Evasion of charges, fraud etc.*

**Evasion of charges etc.**

**48.—**(1) In Schedule 15 to the principal Order (charges in respect of certain services and related matters) for paragraphs 5 to 8 there shall be substituted—

“5.—(1) Where goods or services are provided under this Order and either—

(a) any charge payable by any person under this Order in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or

(b) any payment under this Order is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in sub-paragraph (2) is recoverable summarily as a debt from the person in question by the responsible authority.

(2) That amount—

(a) in a case within sub-paragraph (1)(a), is the amount of the charge or (where it has been reduced) reduction;

(b) in a case within sub-paragraph (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under paragraph 3 or this paragraph to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

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*Status: This is the original version (as it was originally enacted).*

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(4) For the purposes of this paragraph, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this paragraph and paragraph 6, “responsible authority” means—

- (a) in relation to the recovery of any charge under paragraph 3 in respect of the provision of goods or services under this Order, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this paragraph of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;
- (c) in a case within sub-paragraph (1)(b), the person who made the payment.

(6) But the Department may by directions provide for—

- (a) the functions of any responsible authority of recovering any charges under this Order in respect of the provision of goods or services under this Order;
- (b) the functions of any responsible authority under this paragraph and paragraph 6,

to be exercised on behalf of the authority by another health services body.

**6.—(1)** Regulations may provide that, where a person fails to pay—

- (a) any amount recoverable from him under paragraph 3 in respect of the provision of goods or services under this Order; or
- (b) any amount recoverable from him under paragraph 5,

a notice (referred to in this paragraph as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this paragraph as a penalty charge) of an amount determined in accordance with the regulations.

(2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

- (a) £100;
- (b) the amount referred to in sub-paragraph (1)(a) or (b) multiplied by 5.

(3) The Department may by order provide for sub-paragraph (2) to have effect as if, for the sum specified in head (a) or the multiplier specified in head (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.

(4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(5) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(6) Any sum payable under the regulations (including the amount referred to in sub-paragraph (1)(a) or (b)) may be recovered by the responsible authority summarily as a debt.

(7) But a person is not liable by virtue of a penalty notice—

- (a) to pay at any time so much of any amount referred to in sub-paragraph (1) (a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) No order shall be made under sub-paragraph (3) unless a draft has been laid before, and approved by resolution of the Assembly.

7.—(1) A person is guilty of an offence if he does any act mentioned in paragraph (2) with a view to securing for himself or another—

- (a) the evasion of the whole or part of any charge under this Order in respect of the provision of goods or services under this Order;
- (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment;
- (c) a payment under this Order (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in sub-paragraph (1) are—

- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation; or
- (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this paragraph before a magistrates' court if he is authorised to do so by the Department.

(5) Proceedings for an offence under this paragraph may be begun within either of the following periods—

- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge;
- (b) the period of 12 months beginning with the commission of the offence.

(6) For the purposes of sub-paragraph (5), a certificate purporting to be signed by or on behalf of the Department as to the date on which such evidence as is mentioned in head (a) of that sub-paragraph came to its knowledge is conclusive evidence of that date.

(7) Where, in respect of any charge or payment under this Order—

- (a) a person is convicted of an offence under this paragraph; or
- (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under paragraph 6,

he shall not, in a case within head (a), be liable to pay any such penalty charge or further sum by way of penalty or, in a case within head (b), be convicted of such an offence.

(8) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.”.

(2) Paragraphs 5 to 7 of Schedule 15 to the principal Order apply to charges which may be made and recovered under Article 20 of the [Health Services \(Primary Care\) \(Northern Ireland\) Order 1997 \(NI 7\)](#) as they apply to charges under the principal Order which may be recovered under paragraph 3 of that Schedule.

### **Disqualification of Part VI practitioners**

**49.** For Schedule 11 to the principal Order there shall be substituted the Schedule set out in Schedule 2.

*Miscellaneous***Disclosure of information by the Commissioner for Complaints**

**50.** In Article 21 of the [Commissioner for Complaints \(Northern Ireland\) Order 1996 \(NI 7\)](#) (disclosure of information by Commissioner) paragraph (1A) shall be omitted and for paragraphs (1B) and (1C) there shall be substituted—

“(1B) Where information is to the effect that any person (“the subject”) is likely to constitute a threat to the health or safety of any other person (“the person at risk”), the Commissioner may disclose that information to any person to whom the Commissioner thinks it should be disclosed in the interests of the health or safety of the person at risk.

(1C) If the Commissioner discloses information as permitted by paragraph (1B) he shall—

- (a) where he knows the identity of the subject, inform the subject—
  - (i) that he has disclosed the information; and
  - (ii) of the identity of any person to whom he has disclosed it; and
- (b) inform the person from whom the information was obtained that he has disclosed it.”.

**Provision of information as to births and deaths**

**51.—(1)** The Registrar General of Births and Deaths in Northern Ireland may provide to the Department or the Agency any information to which this subsection applies.

(2) Any information provided under subsection (1) shall be provided in such form as appears to the Registrar General appropriate for the purpose of assisting the Department or the Agency in the performance of its functions in relation to health services.

(3) Subsection (1) applies to any information—

- (a) entered in any register kept under the [Births and Deaths Registration \(Northern Ireland\) Order 1976 \(NI 14\)](#); or
- (b) which is kept by the Registrar General under any other statutory provision and relates to any birth or death.

(4) The registrar of each district may furnish to a Health and Social Services Board the area of which includes the whole or part of the registrar’s district such particulars of each birth and death which occurred in the Board’s area as are entered in a register of births and deaths kept for that district.

(5) The Department may by regulations make provision as to the manner in which and the times at which particulars are to be furnished under subsection (4).



**Liability of officers of Health and Social Services Councils**

**52.** In Article 97(1) of the principal Order (protection for officers of health and social services bodies acting in execution of duty) after sub-paragraph (d) there shall be inserted—

“or

(e) a Health and Social Services Council,”.

**Regulations under section 11 of the Medical Act 1983**

**53.** In section 11 of the Medical Act 1983 (c. 54) (supplementary provisions regarding experience required for full registration)—

(a) in subsection (4) in the definition of “prescribed” for “Secretary of State” there shall be substituted “Department of Health, Social Services and Public Safety”;

(b) for subsection (7) there shall be substituted—

“(7) The power of the Department of Health, Social Services and Public Safety to make regulations under this section shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and regulations made by that Department under this section shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were statutory instruments within the meaning of that Act.”.

**Public access to meetings of certain bodies**

**54.—**(1) Sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (c. 9) (which provide for public access to meetings of a district council and for the publication of information concerning such meetings) shall, with the modifications set out in subsection (2) apply in relation to meetings of—

- (a) a Health and Social Services Board;
- (b) the Agency;
- (c) a special agency;
- (d) an HSS trust;
- (e) a Health and Social Services Council; and
- (f) the Northern Ireland Social Care Council,

as they apply in relation to meetings of a district council.

(2) The modifications are—

- (a) any reference to a district council shall be read as a reference to a body mentioned in subsection (1); and

(b) any reference to councillors or members of the council shall be read as a reference to members of such a body.

(3) At the end of paragraph 6 of Schedule 4 to the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#) (proceedings of the Mental Health Commission for Northern Ireland) there shall be added—

“(3) Sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (which provide for public access to meetings of a district council and for the publication of information concerning such meetings) shall, with the modifications set out in sub-paragraph (4), apply in relation to meetings of the Commission as they apply in relation to meetings of a district council.

(4) The modifications are—

- (a) any reference to a district council shall be read as a reference to the Commission; and
- (b) any reference to councillors or members of the council shall be read as a reference to members of the Commission.”.

#### **Sale of medical practices: goodwill**

**55.** For Schedule 10 to the principal Order there shall be substituted the Schedule set out in Schedule 3.

## PART IV

### MISCELLANEOUS AND GENERAL

#### *Pharmaceutical chemists*

#### **Regulation of the profession of pharmaceutical chemist**

**56.—**(1) The Department may by order make provision modifying the regulation of the profession of pharmaceutical chemist, so far as appears to it to be necessary or expedient for the purpose of securing or improving the regulation of that profession or the services which that profession provides or to which it contributes.

(2) Schedule 4 (which makes further provision about orders under this section) shall have effect.

#### *General*

#### **Orders, regulations and directions**

**57.—**(1) Subject to subsections (2) and (3), any regulations or orders made by the Department under this Act shall be subject to negative resolution.

- (2) Subsection (1) does not apply to—
- (a) an order under section 56;
  - (b) an order under section 58 which contains only provision for or in connection with the transfer of any property, rights or liabilities; or
  - (c) an order under section 61(2).

(3) Regulations or orders under this Act may contain—

- (a) any supplementary, incidental or consequential provision;
- (b) any transitory, transitional or saving provision,

which the Department considers necessary or expedient.

(4) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to a direction given by the Department under this Act as if the direction were a statutory instrument.

### **Supplementary and consequential provision**

**58.**—(1) The Department may by order make—

- (a) such supplementary, incidental or consequential provision; or
- (b) such transitory, transitional or saving provision,

as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) The provision which may be made under subsection (1) includes provision amending or repealing any statutory provision, instrument or document.

### **Interpretation**

**59.**—(1) In this Act “the principal Order” means the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#).

(2) Except where any provision of this Act otherwise provides, any word or expression to which a meaning is assigned by Article 2(2) of the principal Order has the same meaning in this Act as in that Order.

### **Amendments and repeals**

**60.**—(1) In Article 8(1)(b) of the 1991 Order (health and social services contracts) for “(f) to (j)” there shall be substituted “(g) to (j)”.

(2) In Article 21(1) of that Order (indicative amount for doctors' practices) for “paragraphs (2) and (8)” there shall be substituted “paragraph (8)”.

(3) The statutory provisions specified in Schedule 5 are repealed to the extent specified in the second column of that Schedule.

**Short title and commencement**

**61.—**(1) This Act may be cited as the Health and Personal Social Services Act (Northern Ireland) 2001.

(2) Parts I to III, sections 56 and 60 and the Schedules to this Act shall come into operation on such day or days as the Department may by order appoint; but section 39 shall not be brought into operation by such an order before 1 April 2002.