

*Status: Point in time view as at 01/04/2009.*

**Changes to legislation:** *There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*



## 2001 CHAPTER 3

### PART III

#### HEALTH AND [F<sup>1</sup>SOCIAL CARE]– GENERAL

**F1** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); [S.R. 2009/114](#), [art. 2](#)

#### *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

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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

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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;

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- (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;
- (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

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- (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

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(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

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*Status: Point in time view as at 01/04/2009.*

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(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;

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- (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 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.



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(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.”.

*[<sup>F2</sup>Health and Social Care trusts]*

**F2** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(c\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114](#), [art. 2](#)

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### Establishment orders

**43.**—(1) In Article 10 of the 1991 Order ([<sup>F3</sup>HSC 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 [<sup>F4</sup>Health and Social Care trusts] (in this Order referred to as [<sup>F3</sup>HSC trusts])—

- (a) to provide goods and services for the purposes of the health and [<sup>F5</sup>social care]; 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 ([<sup>F3</sup>HSC 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 [<sup>F6</sup>HSC 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 [<sup>F6</sup>HSC trust] (including an [<sup>F6</sup>HSC 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—

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- (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 [<sup>F6</sup>HSC trust] dissolved before the coming into operation of this section.

(7) In Article 16(1) of the 1991 Order (trust funds and trustees for [<sup>F3</sup>HSC 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 [<sup>F3</sup>HSC 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.

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|-----------|--|
| <b>F3</b> | Words in Act substituted (1.4.2009) by virtue of <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a> |
| <b>F4</b> | Words in Act substituted (1.4.2009) by virtue of <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(c)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a> |
| <b>F5</b> | Words in Act substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(a)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <a href="#">art. 2</a>        |
| <b>F6</b> | Words in Act substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>           |

### 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 [<sup>F7</sup>HSC trust] of its functions or of its obligations under [<sup>F8</sup>HSC contracts]; and
- (b) in circumstances specified in directions under paragraph 6 of that Schedule, with the consent of the Department.” .

*Status: Point in time view as at 01/04/2009.*

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(2) In Schedule 3 to the 1991 Order ([<sup>F9</sup>HSC trusts]) for paragraph 6 there shall be substituted—

“6.—(1) An [<sup>F7</sup>HSC 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 [<sup>F7</sup>HSC 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 [<sup>F7</sup>HSC trust] by paragraph 1 of Schedule 4; or

(b) the maximum amount which an [<sup>F7</sup>HSC 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 [<sup>F9</sup>HSC 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 [<sup>F7</sup>HSC trust] may employ such staff at it thinks fit.

(3) Subject to any directions given by the Department under paragraph 6, an [<sup>F7</sup>HSC trust] may—

(a) pay its staff such remuneration and allowances; and

(b) employ them on such other terms and conditions,

as it thinks fit.” .

**F7** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F8** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(e\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F9** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

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### Public dividend capital

**45.—**(1) Article 14 of the 1991 Order (originating capital debt of, and other financial provisions relating to, [F<sup>10</sup>HSC 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 [F<sup>10</sup>HSC 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.

**F10** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114](#), [art. 2](#)

### Existing [F<sup>11</sup>HSC trusts]: conversion of initial loan

**46.—**(1) This section applies to any [F<sup>12</sup>HSC trust] in existence immediately before commencement.

(2) On commencement so much of the originating capital debt of the [F<sup>12</sup>HSC trust] as remains outstanding immediately before commencement is to be treated as the originating capital of the [F<sup>12</sup>HSC trust] and accordingly is public dividend capital.

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(3) Any reference in any statutory provision, instrument or other document to the originating capital debt of the [F<sup>12</sup>HSC 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 [F<sup>11</sup>HSC 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.

**F11** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F12** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

### **Borrowing, 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 [F<sup>13</sup>HSC 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 [F<sup>14</sup>HSC 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 HSC 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 [F<sup>14</sup>HSC 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 [F<sup>14</sup>HSC trust] as trustee.”.

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

- F13** Words in Act substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114, art. 2](#)
- F14** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114, art. 2](#)

*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.

(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;

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

- (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 [<sup>F15</sup>health care] 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



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*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

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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.

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

(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.

**F15** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

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

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

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

### *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 [<sup>F16</sup>, RBSO] 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 [<sup>F16</sup>, RBSO] in the performance of its functions in relation to [<sup>F17</sup>health care].

(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 [<sup>F18</sup>the Regional Board] 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).

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

- F16** Words in s. 51(1)(2) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 18\(1\)\(a\)](#); S.R. 2009/114, [art. 2](#)
- F17** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F18** Words in s. 51(4) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 18\(1\)\(b\)](#); S.R. 2009/114, [art. 2](#)

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

**52.** In Article 97(1) of the principal Order (protection for officers of health and [<sup>F19</sup>social care] bodies acting in execution of duty) after sub-paragraph (d) there shall be inserted—

“or

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

- F19** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

### 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—

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III. (See end of Document for details)*

- [<sup>F20</sup>(a) the Regional Board;  
 (aa) the Regional Agency;  
 (b) RBSO;]  
 (c) a special agency;  
 (d) an [<sup>F21</sup>HSC trust];  
 [<sup>F22</sup>(e) the Patient and Client 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) <sup>F23</sup> .....

**F20** S. 54(1)(a)(aa)(b) substituted (1.4.2009) for s. 54(1)(a)(b) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 18\(2\)\(a\)](#); S.R. 2009/114, [art. 2](#)

**F21** Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**F22** S. 54(1)(e) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 18\(2\)\(b\)](#); S.R. 2009/114, [art. 2](#)

**F23** S. 54(3) repealed (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 33, 34\(3\), Sch. 7](#); S.R. 2009/114, [art. 2](#)

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

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

**Status:**

Point in time view as at 01/04/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, PART III.