



2001 CHAPTER 3

PART III

HEALTH AND PERSONAL SOCIAL SERVICES – GENERAL

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—

Status: This is the original version (as it was originally enacted).

“(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.”.