
STATUTORY INSTRUMENTS

1995 No. 2704 (N.I. 14)

NORTHERN IRELAND

**The Health and Personal Social Services
(Amendment) (Northern Ireland) Order 1995**

Made - - - - 18th October 1995
Laid before Parliament 8th November 1995
Coming into operation on days to be appointed under
Article 1(1)

At the Court at Buckingham Palace, the 18th day of October 1995

Present

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of sections 1, 2, 5 and 6 of the National Health Service (Amendment) Act 1995:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 13 of the said Act of 1995) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1 Title and commencement

(1) This Order may be cited as the Health and Personal Social Services (Amendment) (Northern Ireland) Order 1995 and shall come into operation on such day or days as the Head of the Department may by order appoint.

(2) An order under paragraph (1) may make such transitional provisions and savings as appear to the Head of the Department to be necessary or expedient in connection with the coming into operation of this Order.

2 Interpretation

(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972.

(3) Article 2(2) of the 1972 Order (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

Disqualified practitioners: engagement in provision of services by others

3. For paragraph 3 of Schedule 11 to the 1972 Order (functions of Tribunal on finding that the inclusion of a person’s name in a list prepared under Part VI of that Order would be prejudicial to the efficiency of the services to which the list relates) there shall be substituted—

“3. The Tribunal, on receiving representations from a Health and Social Services Board shall, and in any other case may, inquire into the case and, if it is of opinion that the continued inclusion of the said person in any list to which the representations relate would be prejudicial to the efficiency of the said services—

- (a) shall direct that his name be removed from that list; and
- (b) may also, if it thinks fit, direct that his name be removed from, or not be included in, any corresponding list kept by other Health and Social Services Board; and
- (c) where it makes a direction under sub-paragraph (b), may also, if it thinks fit, declare that he is not fit to be engaged in any capacity in the provision of those services”.

Interim suspension of practitioners

4. After paragraph 8 of Schedule 11 to the 1972 Order there shall be inserted—

“8A.—(1) A Health and Social Services Board which has made representations under paragraph 1 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under sub-paragraph (2) in relation to the person to whom the case relates.

(2) If, on an application under this paragraph, the Tribunal is satisfied that it is necessary to do so in order to protect patients, it shall direct that sub-paragraph (3) shall apply to the person concerned as respects services of the kind to which the case in question relates.

(3) A person to whom this sub-paragraph applies shall—

- (a) be deemed to have been removed from any relevant list in which his name is included,
- (b) be disqualified for inclusion in any relevant list in which his name is not included, and
- (c) be deemed to be a person in relation to whom there is in force a declaration under paragraph 3(c) concerning his fitness to be engaged in the provision of services of the relevant kind.

(4) A direction under sub-paragraph (2) shall cease to have effect on the Tribunal’s disposing of the case in connection with which it is made.

(5) In sub-paragraph (2), the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under Part VI of this Order.

(6) In the application of sub-paragraph (3) to any person—

- (a) “relevant list” means a list prepared under Part VI of this Order of persons undertaking to provide services of the kind to which the direction applying the sub-paragraph to him relates, and

- (b) “services of the relevant kind” means services of the kind to which that direction relates.

8B.—(1) Where—

- (a) on disposing of a case under paragraph 3, the Tribunal makes a direction under sub-paragraph (b) of that paragraph, and
- (b) the person to whom the direction relates is a person to whom paragraph 8A(3) would, apart from this paragraph, cease to apply on the disposal of the case,

the Tribunal may, if it considers it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under paragraph 3(b) relates.

(2) A direction under sub-paragraph (1) shall cease to have effect—

- (a) where no appeal against the direction under paragraph 3(b) is brought, at the end of the period for bringing an appeal, and
- (b) where an appeal against that direction is brought, when the appeal process has been exhausted.

(3) Where the power conferred by sub-paragraph (1) is exercisable by virtue of a direction which is not coupled with a declaration under paragraph 3(c), paragraph 8A(3) shall have effect, in relation to the exercise of that power, with the omission of head (c).

(4) In sub-paragraph (1), the reference to patients is to persons to whom services of the kind to which the direction under paragraph 3(b) relates are, or may be, provided under Part VI of this Order.

8C.—(1) Before making a direction under paragraph 8A(2) or 8B(1) in relation to any person, the Tribunal shall give him an opportunity—

- (a) to appear before the Tribunal, either in person or by counsel or solicitor or such other representative as may be prescribed, and
- (b) to be heard and to call witnesses and produce other evidence.

(2) Regulations may—

- (a) make provision for, or for the determination of, procedure in relation to determining applications under paragraph 8A or the exercise of the power conferred by paragraph 8B(1), and
- (b) provide for the functions of the Tribunal under paragraph 8A or 8B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

8D.—(1) This paragraph applies where, under any provisions in force in England and Wales or Scotland corresponding to paragraph 8A or 8B, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of Part VI of this Order of persons undertaking to provide services of one or more of the kinds specified in paragraph 1(1), other than those in which his name is included.

(2) The practitioner shall, while he is so disqualified—

- (a) be disqualified for inclusion in any list prepared under Part VI of this Order of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and

- (b) be deemed to have been removed from any relevant list in which his name is included.

8E.—(1) Regulations may provide for the making to persons to whom paragraph 8A(3) or 8D(2) applies of payments in consequence of the application of that provision.

(2) Regulations under sub-paragraph (1) may provide for the determination by the Department in a prescribed manner of anything for which provision may be made by regulations under that sub-paragraph.”.

Procedure relating to disqualification

5. In paragraph 8 of Schedule 11 to the 1972 Order, for sub-paragraphs (a) and (b) (regulations to provide for the procedure for the holding of inquiries and the powers of the Tribunal) there shall be substituted—

- “(a) for inquiries under paragraphs 3, 6 and 9 to be held in accordance with such procedure as may be prescribed by or determined under the regulations and, in particular—
 - (i) for any person who is the subject of any such inquiry to have an opportunity of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before, and of being heard by, the Tribunal, and of calling witnesses and producing other evidence on his behalf; and
 - (ii) for the hearing by the Tribunal to be in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal such powers as appear to the Department to be necessary for the purpose of holding inquiries under this Schedule, including power to require the attendance of witnesses and the production of documents, and to administer oaths; and”.

Constitution of the Tribunal

6. In Part II of Schedule 11 to the 1972 Order (which makes provision for the constitution of the Tribunal) for paragraphs 11 to 15 there shall be substituted—

- “**11.** The Tribunal shall consist of—
 - (a) a chairman appointed by the Lord Chief Justice,
 - (b) such number of deputy chairmen as the Lord Chief Justice may appoint,
 - (c) such number of persons as the Department may appoint for the purposes of this sub-paragraph,
 - (d) such number of medical practitioners as the Department may appoint for the purposes of this sub-paragraph,
 - (e) such number of medical practitioners having the qualifications prescribed under Article 62 as the Department may appoint for the purposes of this sub-paragraph,
 - (f) such number of dental practitioners as the Department may appoint for the purposes of this sub-paragraph,
 - (g) such number of ophthalmic opticians as the Department may appoint for the purposes of this sub-paragraph, and
 - (h) such number of pharmacists as the Department may appoint for the purposes of this sub-paragraph.

12. A person appointed as the chairman or a deputy chairman shall be either a barrister-at-law practising in Northern Ireland or a practising solicitor of the Supreme Court of Judicature of Northern Ireland of not less than ten years' standing.

13. Any appointment for the purposes of paragraph 11(c) shall be made after consultation with Health and Social Services Boards.

14. Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 11 shall be made after consultation with such organisations as the Department may recognise as representative of the profession or calling concerned.

15.—(1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman,
- (b) a person appointed under paragraph 11(c), and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 11 as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c), the reference to the person concerned is—

- (a) in the case of functions under paragraph 3, to the person to whom the representations in question relate,
- (b) in the case of functions under paragraph 6 or 9, to the person whose disqualification is under consideration,
- (c) in the case of functions under paragraph 8A, to the person to whom the application in question relates, and
- (d) in the case of functions under paragraph 8B, to the person in relation to whom the application of paragraph 8A(3) may be continued.

(3) In the case of functions under paragraph 8A or 8B, sub-paragraph (1) is subject to paragraph 8C(2)(b).”.

Repeal

7. Paragraph 2 of Schedule 1 to the Health and Social Security (Northern Ireland) Order 1984 is hereby repealed.

N. H. Nicholls
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is part of the Order)

This Order, which is made only for purposes corresponding to those of sections 1, 2, 5 and 6 of the National Health Service (Amendment) Act 1995 amends the law relating to the disqualification, under Article 65 of, and Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972, of persons providing certain services. In particular, the Order—

- (a) makes provision for the Tribunal, constituted under Schedule 11 to the 1972 Order, to declare that a person is not fit to engage in the provision of certain services by others;
- (b) makes provision for the interim suspension of practitioners engaged in certain services pending the disposal of any case relating to that practitioner by the Tribunal;
- (c) makes provision for the procedure of the Tribunal to be determined by regulations;
- (d) makes amendments to the constitution of the Tribunal.