Changes to legislation: *The Health and Personal Social Services (Northern Ireland) Order 1991 is up to date with all changes known to be in force on or before 14 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1991 No. 194 (N.I. 1)

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

- - - - - - *5th February 1991*

Introductory

Title and commencement

1.—(1) This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1991.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint[F1].

(3) The following provisions shall come into operation on 1st April 1991, namely—

(a) this Article;

(b) Articles 2, 3, 4, 6, 29(1)(a) and (b), 30, 32 and 33;

(c) Schedule 1;

(d) Part I of Schedule 5 and Article 34 so far as it relates to that Part;

(e) Part I of Schedule 6 and Article 35 so far as it relates to that Part.

(4) An order under paragraph (2) may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Head of the Department necessary or expedient in connection with the provisions brought into operation.

F1 fully exercised SRs 1991/131, 1992/196. 1993/162

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"goods" includes accommodation;

"the principal Order" means the Health and Personal Social Services (Northern Ireland) Order 1972[F3];

[[F4]"provide" includes manage;**]**

[[F5]"the Regional Board" means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;**]**

"services" includes services of any description, whether or not being services under the principal Order.

(3) Article 2(2) **[**[F6]and (2A)**]** of the principal Order (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

F2 1954 c. 33 (NI)
F3 1972 NI 14
F4 2001 c. 3 (NI)
F5 Art. 2(2): definition of "the Regional Board" inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(1)**; S.R. 2009/114, **art. 2**
F6 Words in art. 2(3) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(2)**; S.R. 2009/114, **art. 2**

Health and **[**[F7] social care**]** bodies

F7 Words in Order 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**

Constitution of Health and Social Services Boards

3. [F8] . . . . . .

F8 Art. 3 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(3), **Sch. 7**; S.R. 2009/114, **art. 2**

Health and Social Services Councils

4. [F9] . . . . . .

F9 Art. 4 repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(3), **Sch. 7**; S.R. 2009/114, **art. 2**

Art. 5 rep. by 2001 c. 3 (NI)

Abolition of Northern Ireland Health and Social Services Training Council

6. [F10] . . . . . .

F10 Art. 6 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**

Removal of Crown immunities

7.—(1) [F11] . . . . . .

(2) In Schedule 2—

(a) Part I has effect to continue certain exemptions for **[**F12health and social care body to which this Article applies**]** and property held, used or occupied by such bodies; F13. . .

(b) F13. . . . . .

(3) Where, as a result of the provisions of paragraph (1), by virtue of his employment during any period after the day appointed for the coming into operation of that paragraph—

(a) an employee has contractual rights against a **[**F14health and social care body to which this Article applies**]** to benefits in the event of his redundancy, and

(b) he also has statutory rights against the **[**F14health and social care body to which this Article applies**]** under**[**F15 Part XII of the Employment Rights (Northern Ireland) Order 1996**]** (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in sub-paragraph (a) shall be taken as satisfying his entitlement to benefits under the said**[**F15 Part**]**.

(4) Nothing in paragraph (1) affects the extent of the expression "the services of the Crown" where it appears in—

(a) Schedule 1 to the Registered Designs Act 1949F16 (provisions as to the use of registered designs for the services of the Crown etc.); and

(b) sections 55 to 59 of the Patents Act 1977F17 (use of patented inventions for services of the Crown);

and, accordingly, services provided in pursuance of any power or duty of the Department under Part II or V of the principal Order **[**F18or the 2009 Act**]** shall continue to be regarded as included in that expression, whether the services are in fact provided by a **[**F19health and social care body to which this Article applies**]**, an **[**F20HSC trust**]** or any other person.

(5) The Department may by order made subject to affirmative resolution provide that, in relation to any provision contained in a local Act and specified in the order, the operation of paragraph (1) shall be excluded or modified to the extent specified in the order.

[F21(6) This Article applies to the following health and social care bodies—

(a) the Regional Board;

(b) the Regional Agency;

(c) RBSO;

(d) a special agency.**]**

F11 Art. 7(1) repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(a), **Sch. 7**; S.R. 2009/114, **art. 2**

F12 Words in art. 7(2) 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. 13(4)(b)**; S.R. 2009/114, **art. 2**

F13 Art. 7(2)(b) and preceding word repealed (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 33, 34(3), Sch. 6 para. 13(4)(c), **Sch. 7**; S.R. 2009/114, **art. 2**

F14 Words in art. 7(3) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(4)(b)**; S.R. 2009/114, **art. 2**

F15 1996 NI 16

F16 1949 c. 88

F17 1977 c. 37

F18 Words in art. 7(4) inserted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(4)(d)**; S.R. 2009/114, **art. 2**

F19 Words in art. 7(4) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(4)(b)**; S.R. 2009/114, **art. 2**

F20 Words in Order 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**

F21 Art. 7(6) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 13(4)(e)**; S.R. 2009/114, **art. 2**

Provision of goods and services

Health and [F22social care] contracts

8.—(1) The bodies mentioned in sub-paragraphs (a) to (e) of paragraph (2) may, for the purpose of carrying out their functions and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

(a) one another; or

(b) any of the bodies or persons mentioned in sub-paragraphs (f) to (j) of that paragraph.

(2) The bodies and persons referred to in paragraph (1) are—

[F23(a) the Regional Board;

(aa) the Regional Agency;

(b) RBSO;**]**

(c) special agencies;

(d) **[**F24Health and Social Care trusts**]**;

(e) the Department;

Sub#para. (f) rep. by 2001 c. 3 (NI)

(g) any of the following within the meaning of the National Health Service Act 1977F25

F26(i) . . . . . .

F27(ii) . . . . . .

(iii) NHS trusts;

Head (iv) rep. by 2001 c. 3 (NI)

(v) the Dental Practice Board;

F28(vi) . . . . . .

[F29(ga) the National Health Service Commissioning Board;

(gb) clinical commissioning groups established under section 14D of the National Health Service Act 2006;

(gc) Special Health Authorities established under section 28 of that Act;

(gd) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;

(ge) Local Health Boards established under section 11 of that Act;

(gf) NHS trusts established under section 18 of that Act;**]**

(h) any of the following within the meaning of the National Health Service (Scotland) Act 1978F30

(i) Health Boards;

[F31(ia) Special Health Boards;**]**

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

(iii) the Scottish Dental Practice Board;

(iv) NHS trusts;

Head (v) rep. by 2001 c. 3 (NI)

[F32(ha) Healthcare Improvement Scotland,**]**

F33(i) . . . . . .

[F34(ia) the National Institute for Health and Care Excellence;

(ib) the Health and Social Care Information Centre;**]**

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

[F35(2A) The bodies mentioned in paragraph (2) may be referred to as " **[**F36health care**]** bodies".**]**

(3) An arrangement falling within paragraph (1) shall be known as a health and **[**F22social care**]** contract and is referred to in this Order as an " **[**F37HSC contract**]**".

(4) Whether or not an arrangement which constitutes an **[**F37HSC contract**]** would, apart from this paragraph, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Department for determination under the following provisions of this Article.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an **[**F37HSC contract**]**, it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangement cannot be agreed,

that party may refer the terms of the proposed arrangement to the Department for determination under the following provisions of this Article.

(6) Where a reference is made to the Department under paragraph (4) or (5), the Department may determine the matter itself or, if the Department considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

(7) In the determination of a reference under paragraph (5), the Department or, as the case may be, the person appointed under paragraph (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(8) A determination of a reference under paragraph (4) may contain such directions (including directions as to payment) as the Department or, as the case may be, the person appointed under paragraph (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the **[**F37HSC contract**]** in question to comply with any such directions.

(9) Without prejudice to the generality of the powers exercisable on a reference under paragraph (4), the Department or, as the case may be, the person appointed under paragraph (6) may in a determination in relation to an arrangement constituting an **[**F37HSC contract**]** vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

(a) subject to sub-paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and

(b) directions included in the determination by virtue of paragraph (8) may contain such provisions as the Department or, as the case may be, the person appointed under